

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES)

CHARLES A. BURCKHARDT,

Appellant,

vs.

THE NORTHWESTERN NATIONAL BANK, a National Banking Association, CHARLES K. SPAULDING, PHIL METSCHAN, A. D. CHARLTON, E. S. COLLINS, CHAUNCEY McCORMICK, NATT McDOUGALL, FREDERICK F. PITTOCK, MARK SKINNER, CHARLES H. STEWART, O. L. PRICE, EMERY OLMSTEAD, JAMES F. TWOHY and CHARLES A. MORDEN,

Appellees,

and

FRED A. BALLIN,

Appellant,

vs.

THE NORTHWESTERN NATIONAL BANK, a National Banking Association, CHARLES K. SPAULDING, PHIL METSCHAN, A. D. CHARLTON, E. S. COLLINS, CHAUNCEY McCORMICK, NATT McDOUGALL, FREDERICK F. PITTOCK, MARK SKINNER, CHARLES H. STEWART, O. L. PRICE, EMERY OLMSTEAD, JAMES F. TWOHY and CHARLES A. MORDEN,

Appellees.

VOLUME II.

(Pages 385 to 787, Inclusive.)

Upon Appeals from the United States District Court  
for the District of Oregon.

FILED

AUG 22 1900



United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

Transcript of Record.

(IN TWO VOLUMES)

---

CHARLES A. BURCKHARDT,

Appellant,

vs.

THE NORTHWESTERN NATIONAL BANK, a National Banking Association, CHARLES K. SPAULDING, PHIL METSCHAN, A. D. CHARLTON, E. S. COLLINS, CHAUNCEY McCORMICK, NATT McDOUGALL, FRÉDERICK F. PITTOCK, MARK SKINNER, CHARLES H. STEWART, O. L. PRICE, EMERY OLMSTEAD, JAMES F. TWOHY and CHARLES A. MORDEN,

Appellees,

and

FRED A. BALLIN,

Appellant,

vs.

THE NORTHWESTERN NATIONAL BANK, a National Banking Association, CHARLES K. SPAULDING, PHIL METSCHAN, A. D. CHARLTON, E. S. COLLINS, CHAUNCEY McCORMICK, NATT McDOUGALL, FRÉDERICK F. PITTOCK, MARK SKINNER, CHARLES H. STEWART, O. L. PRICE, EMERY OLMSTEAD, JAMES F. TWOHY and CHARLES A. MORDEN,

Appellees.

---

VOLUME II.

(Pages 385 to 787, Inclusive.)

---

Upon Appeals from the United States District Court  
for the District of Oregon.

---



The report shows, as previous reports have shown, that many large lines of credit to affiliated interests are still in the bank. It is remembered that to some extent these lines are the result of additional advances made to work out loans already undesirable, but their adverse effect upon the condition of the bank is felt nevertheless.

It is thought that the condition of the institution is more serious than the directors will permit themselves to believe. You are requested therefore, to give the matter very thorough consideration and to endeavor to arrange some plan by which the more dangerous assets may be eliminated. If you are unable to do that, such credit information should be obtained as will enable a more accurate appraisal of the assets than examiners apparently have been able to make in the past.

If such an appraisal should disclose that losses existed in sufficient amount to impair capital, an assessment of the stock could be issued by this office for the purpose of correcting the situation.

On January 5, please report what losses have been charged off since the examination; what slow and doubtful paper has been collected or secured; whether the banking house has been sold under the option existing at the time of the examination; whether overdrafts are being restricted and whether those to directors and their concerns have been collected, and what has been done regarding the other matters brought to the attention of the Board [363—33] and listed for their notice on the sheet

supplemental to page 11. Please forward copies of your letter to Chief National Bank Examiner T. E. Harris, 1103 Alexander Building, San Francisco, California, and National Bank Examiner M. C. Wilde, 238 Central Building, Seattle, Washington. No other special report need be made prior to January 5th.

Respectfully,  
(Signed) E. W. STEARNS,  
Deputy Comptroller."

(R., 143, 44, 45.)

Thereafter this same committee reported to the board of directors December 23, 1925, as follows:

"Portland, Oregon, December 23, 1925.

To the Board of Directors, The Northwestern National Bank of Portland, Portland, Oregon.  
Gentlemen:

We, your Examining Committee, appointed at the annual meeting, beg leave to report that from December 3rd to December 22nd we made a full and careful examination of the affairs of this bank as of date.

We counted the cash, examined the bonds and all other securities; we checked the notes, collateral and real estate; checked the outstanding and certified checks, cashier's checks, and Time and Demand Certificates of Deposit and overdrafts; we verified the outstanding stock certificates; verified the first clearings; examined the Expense Account and general affairs of the bank, making a full and

careful examination of same. We found the books correct.

We recommend the following:

The Bank Examiner recommended at the conclusion of his last examination, that a total of \$170,000.00 be charged off; \$107,000.00 of this amount has already been charged off, and we recommend the balance covered by his suggestions, approximately \$63,000 be charged off as soon as the earnings are available for the purpose.

We further recommend that if the building is sold, negotiations of which are almost concluded, that all the profits arising therefrom, estimated to be \$250,000, be used in charging off from the slow and non-productive lines mentioned in the Examiner's Report.

We also recommend that consideration be given to the suggestion of the National Examiners relative to the organization of a company for the purpose of taking over from the bank's assets some of the slow and non-income producing paper.

(Signed) PHIL METSCHAN.  
C. K. SPAULDING.  
A. D. CHARLTON."

(R., 123, 24.) [364—34]

On January 5, 1926, the board of directors wrote the Comptroller of the Currency as follows:

"January 5, 1926.

Hon. Comptroller of the Currency,  
Washington, D. C.

Sir:

As requested in your letter of November 17th,

we herewith make report concerning items listed in your Examiner's report covering the condition of the bank as of date September 30, 1925, viz.:

On October 24, 1925, Profit and Loss Account was debited in the amount of \$107,119.66, and on January 5, 1926, in the sum of \$62,824.46, covering losses determined by the Board and listed as losses in the Examiner's report. A detailed list of such items is enclosed, herein.

Collections on slow and doubtful paper are as follows:

Note Albatross Metal Furniture Co. reduced.	1,500.00
Note A. O. Anderson, et al., reduced.....	3,600.00
Notes M. L. Jones, reduced.....	27,926.73
Notes Northwest Livestock Co. reduced...	6,806.35
Notes Fred W. Falconer, reduced.....	234.46
Notes Kelly Ranch Co. reduced.....	4,180.45
Note J. H. Dobbin, Paid .....	3,601.43
Note J. R. Blackaby Commercial Co. reduced	1,000.00
Note Earl Blackaby reduced .....	100.00
Note Cline Falls Power Co. Paid.....	9,500.00
Notes C. S. Hudson et al., reduced.....	2,864.65
Note W. J. Jamieson, reduced.....	3,300.00
Note Con. O'Keefe, paid.....	11,785.00
Note Bank of Ione, Oregon, reduced.....	1,229.65
Note C. R. Gunzel, reduced.....	90.00
Notes Wilfrid P. Jones (Listed in report as \$10,900.00, this indebtedness read- justed by taking over ranch property held as collateral, now carried in "Other Real Estate" at \$10,736.14; and note of Wilfrid P. Jones for \$2,500.00, covering	



accumulated interest and prior lien on property, now carried in "Bills Receivable" to be paid at the rate of \$50.00 per month, first payment having been made.)

Note F. H. Gaulke, reduced . . . . .	\$ 3,657.14
Note J. G. Megler & Co. reduced. . . . .	500.00
Note J. J. Metzler reduced. . . . .	216.81
Note Miniature Lumber Co. reduced. . . . .	109.92
Note Edgar B. Piper, reduced. . . . .	250.00
Note J. H. Hayes & Son, reduced. . . . .	6,295.69
Note W. U. Sanderson, reduced. . . . .	200.00
Note Santiam Woolen Mills, Inc. reduced. . . . .	2,550.00
Note J. W. Siemens, reduced. . . . .	1,167.39
Note James F. Twohy, reduced. . . . .	9,100.00
Note F. E. Veness, reduced. . . . .	94.00
Note S. L. Vincent, reduced. . . . .	500.00
Note McCormick Lumber Co., paid. . . . .	86,500.00

Large Lines.

Note First Bank of Coincil, Ida., reduced. . . . .	25,000.00
Notes endorsed N. H. Rubottom, reduced. . . . .	4,600.00
Note Geo. A. Jones, et al. reduced. . . . .	4,254.37
Notes First Bank of Joseph, Ore., reduced. . . . .	25,668.34

[365—35]

Note H. B. Davidhizer, paid. . . . .	1,200.00
Note Dobbin and Huffman, paid. . . . .	12,000.00
Note F. H. Gaulke, reduced. . . . .	14,948.37
Notes Northwest Canning Co., reduced. . . . .	97,969.00
Overdraft Twohy Bros. paid. . . . .	487.39
Overdraft James F. Twohy, paid. . . . .	428.12
Note Philip Twohy, reduced. . . . .	500.00
Overdraft L. R. Wheeler, paid. . . . .	778.74

## Other Loans Especially Mentioned.

Notes Baldwin Sheep Co., reduced.....	20,000.00
Notes Commerce Co., Redmond.....	5,000.00
Note C. H. Farrington, reduced.....	75,000.00
Note J. R. Ridgway, reduced.....	85,000.00
Notes Geo. L. and J. A. McPherson Corporation, reduced .....	17,000.00
Notes Miller Calhoun Johnson Co., reduced.	52,000.00

## Bonds, Securities, etc.

Oregon Land Settlement Commission, paid.	6,000.00
Oregon State Farm Bureau Federation, reduced .....	300.00

## Other Real Estate Owned.

The following parcels have been sold: Lots 15 and 16, Block 283, Couch Addition to the City of Portland: Lots 1 and East 18' of Lot 2, Nob Hill Addition to the City of Portland. 5 lots in Block 4, South Portland.

The sale of our building has not as yet been consummated, and inasmuch as we are receiving 12% on the investment, our Directors are not very keen on the sale. However, they have authorized the sale of the building.

The adjustment of the Merchants National Bank Liquidating Account is having our attention, and the taking over of the assets in accordance with our agreement with the Merchants National stockholders will be completed as soon as the abstracts, covering the real property, have been finally examined by our attorneys. In the meantime, we are negotiating for the sale of some of this property, and

hope to be able to dispose of same at a price in excess of the appraised value.

The matters under criticism, as summarized on supplemental page 11 of the report, are having the constant attention of both Directors and Officers.

Respectfully,

(Signed) EMERY OLMSTEAD,  
CHAS. K. SPAULDING,  
M. SKINNER,  
CHAS. H. STEWART,  
O. L. PRICE,  
F. F. PITTOCK,  
PHIL METSCHAN,

Directors."

c—c To T. E. Harris,  
Chief Examiner.

c/c to M. C. Wilde, Examiner. ?

(R., 147-150.)

Following this the Deputy Comptroller of the Currency on the 26th day of April, 1926, wrote the following letter to the board of directors: [366—36]

“TREASURY DEPARTMENT,

Washington.

April 26, 1926.

Board of Directors,  
Northwestern National Bank,  
Portland, Oregon.

Dear Sirs:

The report of an examination of your bank, completed by National Bank Examiner M. C. Wilde on

April 6, 1926, has been received and while indicating improvement along some lines, it does not evidence the degree of improvement that was hoped for and which it is thought might have been shown had the management proceeded with collections with the energy which a situation such as yours requires.

Assets classed as slow in the current report amount to \$3,734,572.44, including the Merchants Liquidating Account of \$498,888.65; while doubtful assets of \$513,130.02 are reported, exceeding surplus, undivided profits and reserve accounts, when items of \$31,661.79 classes as losses, are taken into consideration.

The examiner has furnished this office with a list of assets, which in his opinion, are uncollectible, but which he states the management will not admit as losses at this time. These assets aggregate \$167,437.73 and it was agreed at the time of examination that profits available June 30 will be used to charge them off. An additional list of assets aggregating \$794,580.94 has been furnished this office, which unquestionably contain many potential losses. A large number of the items included in both of these lists are classed as doubtful in the current report. You, of course, understand that you cannot be permitted to carry indefinitely doubtful assets and show and report them as good.

An exhaustive review of past reports at the time of the previous examination forced the conclusion that the condition of your bank is more serious than the directors and management believe and

the current report bears out that conclusion. Unless, therefore, there is a decided change for the better by the time of the next examination in the character of assets classed as slow and doubtful in the last report, it will be necessary to place thereon much lower valuations than have been given in former reports and this, of course, will necessitate a heavy estimate of losses.

It may be that what is needed in your bank, if its affairs are to be rehabilitated to the satisfaction of the examiner and this office, is an entire change in management. It would seem that capable management should have, over a period of years succeeded in relieving the bank's unsatisfactory condition, but your bank has been continuously unsatisfactory since 1920, which indicates conclusively that there is something wrong in the plan of operation. If a change in management is not feasible at this time, the present management should at least be strengthened by some person of energy and ability, who can and will vigorously proceed to realize all that is possible out of the many slow and doubtful loans and other assets that have been [367—37] in the bank for so many years. Please give this matter your very earnest consideration.

The examiner reports that deeds and assignments are now being prepared, by which your bank will acquire title to all of the assets taken from the Merchants National Bank in 1915, a large part of which is real estate. It is proposed, then, to organize a holding company with nominal capital, to take over this real estate, as well as 'other real

estate' owned by the bank and in exchange therefor give the bank stock in the holding company. This stock is to be carried in the 'securities account' or as 'other assets.'

The plan as proposed is not approved and should not be carried out. It cannot be seen where the bank would benefit at all merely from the exchange of 'other real estate' for stock, which will be even less marketable. A holding company does not serve its purpose unless it actually relieves the bank by a cash purchase of assets removed through it.

The necessity for the organization of a holding company, however, with sufficient paid-in capital, to take out of the bank all of the real estate now owned and which it will have title to after the deeds and assignments of that owned by the Merchants National Bank have been completed, cannot be too strongly emphasized, and it is urged that a company be organized in accordance with this plan; also that the elimination through this source of assets other than real estate, which are of questionable character, be arranged.

On June 6, please advise what decision has been reached in this regard and whether you have been successful in selling any of the real estate owned or have prospects for sale.

At the same time state what has been decided in regard to change in management or whether instead you have procured the services of an able collector. Under either circumstances please state what results have been obtained in the way of collection of

slow and doubtful loans and realizing on other slow and doubtful assets up to that time.

A report from you as to what has been done to overcome the other criticisms mentioned on supplemental sheet 11 is also desired and you are requested to attach a copy of your daily statement as of June 6 for comparative purposes, forwarding duplicates of letter and statement to Chief National Bank Examiner T. E. Harris, 1103 Alexander Building; San Francisco, Calif., and National Bank Examiner M. C. Wilde, 238 Central Bldg., Seattle, Wash.

Respectfully,  
(Signed) E. W. STEARNS,  
Deputy Comptroller."

(R., 129-132.)

The board met in a regular meeting and on the 9th day of May, 1926, transacted the following business: [368—38]

"At a regular meeting of the Board of Directors of the Northwestern National Bank of Portland, held this date, there were present Messrs. O. L. Price, Emery Olmstead, A. D. Charlton, James F. Twohy, C. K. Spaulding, F. F. Pittock, Phil Metschan, Charles H. Stewart, and M. Skinner. Mr. Price presiding.

The minutes of the meeting of the Board held April 21st were read, and on motion of Mr. Twohy, seconded by Mr. Stewart, were duly approved.

The minutes of the Executive Committee *meeting* of April 20th, April 27th, May 4th, and May 11th, respectively, were read, and on motion of

Mr. Olmstead, seconded by Mr. Charlton were approved.

The Examining Committee of the Board of Directors submitted its written report covering the condition of the bank as of date May 6, 1926. The report was accepted and filed.

A letter from the Comptroller dated April 26, 1926, addressed to the Board of Directors, relative to the loans mentioned in the report of Examiner M. C. Wilde, dated April 6, 1926, was read to the Board. On motion duly seconded a committee representing the Board, consisting of O. L. Price, chairman, Emery Olmstead president, and Phil Metschan, director, were requested to call upon the Comptroller of the Currency, Washington, D. C., for the purpose of fully discussing all of the matters referred to in said letter.

On motion of Mr. Olmstead, seconded by Mr. Spaulding, the committee by unanimous vote received that all loans to any one person or concern in excess of \$5,000 and not exceeding \$25,000 shall be first approved by not less than senior officers or members of the Executive Committee, and that all loans to any one person or concern which in the aggregate are in excess of \$25,000, shall first be approved by the Executive Committee.

There being no further business to come before the meeting it then adjourned.

O. L. PRICE, Chairman,  
M. SKINNER, Secretary."

(R., 242, 243.)

Thereafter on May 18, 1926, the Examining Com-



mittee consisting of Spaulding, Charlton and Met-  
schan made the following report to the directors  
of the Bank:

“Portland, Oregon, May 18, 1926.

To the Board of Directors The Northwestern Na-  
tional Bank of Portland, Portland, Oregon.  
Gentlemen:

We, your Examining Committee, appointed at the  
annual meeting, beg leave to report that on May  
6th, 1926, started a full and careful examination  
of the affairs of this bank, which was completed  
May 18, 1926. [369—39]

We counted the cash, examined the bonds and  
all other securities, we checked the notes, collateral  
and real estate; checked the outstanding and certi-  
fied checks, cashier's checks, the time and demand  
certificates of deposit and overdrafts; we verified  
the outstanding stock certificates; verified the first  
clearings; examined the Expense Account and gen-  
eral affairs of the bank, making a full and careful  
examination of same. We found the books in bal-  
ance.

We found during the examination overdrafts  
totaling \$16,367.48. They were well scattered, and  
we do not anticipate loss on any of them, but we  
would recommend the closest attention to them.

We find that the bank is being operated as eco-  
nomically as possible, considering the service to be  
rendered; that the profits are materially greater  
month by month than during the previous year.

We feel that at the close of the previous exami-

nation by National Bank Examiner Wilde, all proven losses were charged off. There are certain accounts which require closest attention by the officers of the bank to prevent further loss. We believe that these accounts, which are now in the hands of our new Collector, Mr. Kennedy, are being carefully handled.

Crop conditions at this time appear to be exceptionally favorable, and unless unfavorable weather should develop, our surrounding territory should harvest a large crop this year, which would result to our material advantage in the liquidation of loans such as those in the Ione district.

The farm of the Oregon Agricultural Company, which the bank has undertaken to operate during the past three unfavorable years, has now been leased on a crop rent basis, which will relieve the bank of the most of the risk heretofore involved.

The most of the land of the Dufur Orchard Company has been cleared or is in the process of clearing, and this property has also been leased to responsible tenants on a crop rent basis, so that it should be more than self-sustaining.

The transfer of the assets of the Merchants National Bank is now being completed, and our bank will be in a position to offer for sale the various items of real estate so transferred, and liquidation of the account should begin in the near future.

While it is true that too large an amount of the bank's assets are tied up in non-income producing investments, on the other hand, as an offset to this,

the \$1,200,000 invested in banking house is yielding a net return of twelve per cent on the investment.

Based on our present earning capacity, the bank should be able, if necessary, to directly charge off a substantial amount of its slow assets within the next two years, and this together with liquidation accomplished, through collections and sales of real estate, should put the bank in a position to resume dividends. We believe that the payment of dividends would contribute more than any other one thing toward the growth and progress of the bank. [370—40]

We wish to compliment the management upon its adopted policy of requiring the approval of three *serion* officers on each loan made in excess of \$5,000.

We wish to recommend to the management the closest attention to all items listed as slow or doubtful in the report of National Bank Examiner Wilde, to the end that they may be removed entirely from the Bank in due course.

We believe that with our increased earning capacity and the close co-operation of the officers and directors, the future of the Bank is assured.

Respectfully submitted,  
EXAMINING COMMITTEE.  
(Signed) C. K. SPAULDING,  
A. D. CHARLTON,  
PHIL METSCHAN."

(R. 125-127.)

And on May 24, 1926, the board of directors wrote to the Comptroller of the Currency as follows:

"May 24, 1926.

Hon. Comptroller of the Currency,  
Washington, D. C.

Sir:

Your letter of April 26th, in regard to Examiner Wilde's recent report, has been received, and all matters referred to therein have had our careful attention.

Particular consideration has been given to suggested plan for handling slow paper and enforcement of collections; also the manner in which the assets of the Merchants National Bank shall be taken over by this bank.

In view of the fact that all of these matters involve much detail, the Board feels that a personal discussion of same with your office will be to advantage, and has, by unanimous vote, requested its representatives Messrs. O. L. Price, Chairman, Emery Olmstead, President, and Phil Metschan, Director, to call upon you for that purpose.

This Committee will reach Washington, Monday June 7th. We trust it will be agreeable and convenient for you to meet with them on that date.

Respectfully,

(Signed)

NATT McDOUGALL.

F. F. PITTOCK.

O. L. PRICE.

CHAS. H. STEWART.

E. S. COLLINS.

M. SKINNER.

A. D. CHARLTON,

CHAS. K. SPAULDING.

PHIL METSCHAN.

(R., 133.) [371—41]

On October 22, 1926, T. E. Harris, Chief National Bank Examiner, 12th Federal Reserve District, wrote the president of the Bank October 22, 1926, as follows:

“Portland, Oregon, October 22, 1926.

Mr. Emery Olmstead, President,  
Northwestern National Bank,  
Portland, Oregon.

Dear Sir:

As a result of my examination of your Bank as of close of business September 21, 1926 the following schedule is submitted showing amount of assets considered NON-BANKABLE, together with the amount of such assets classed by me as doubtful and losses:

	Non-bankable.	Doubtful.	Losses.
O. A. Anderson, et. al.....	10,800.00	10,600.00	
J. G. Arnold.....	5,700.00	5,700.00	
Associated Pictures Corp.....	439.44		439.44
Bankers Discount Corp.....	46,708.30	20,000.00	26,708.30
Northwest Livestock Loan Co.....	50,756.06		31,556.00
Berkeley Investment Co.....	11,205.67		11,205.67
J. R. Blackaby.....	15,000.00	15,000.00	
Boulder Creek Lbr. Co.....	10,759.56		
C. A. Burckhardt.....	40,000.00	40,000.00	
Burdick Mortgage Co.....	6,500.00		2,500.00
Denton G. Burdick.....	7,876.48		7,876.48
A. C. Churchill, Receiver.....	30,965.68		
A. F. Claus, Jr.....	750.00		750.00
A. F. Claus & Sons.....	1,100.00		1,100.00
Dennos Food Co.....	3,691.33		

	Non-bankable.	Doubtful.	Losses.
Fremont & Everett.....	3,648.62		3,648.62
Chas. H. Greeley.....	22,500.00	22,500.00	
Henninger & Ayes Mfg. Co.....	1,250.00		1,250.00
M. L. Jones.....	77,806.64		
Oregon Agricultural Co.....	125,000.00	67,733.66	132,072.98
<hr/>			
Wilford P. Jones.....	2,400.00		2,400.00
Kelly Ranch Co.....	190,804.64	90,804.64	100,000.00
Chas. E. McCulloch.....	11,600.00	11,600.00	
W. W. Lloyd.....	100.00		100.00
Geo. C. W. Low.....	55,000.00	40,000.00	15,000.00
Miniature Lumber Co.....	2,112.20	2,112.20	
B. W. Montgomery.....	549.20		549.20
A. J. Olson.....	3,500.00	3,500.00	
Rock Creek Ranch Co.....	22,287.38		22,287.38
G. F. Russell.....	824.11		824.11

	Non-bankable.	Doubtful.	Losses.
Chas. E. Sand.....	2,000.00	2,000.00	
Security Storage & Tfr. Co.....	12,500.00		
J. H. Thatcher.....	200.00		200.00
Twohy Bros. & Co.....	112,500.00		
F. E. Veness.....	36,838.06		36,838.06
Oswald West.....	10,140.98		2,640.98
Bank of Ione.....	183,879.12	15,000.00	45,000.00
O. R. Russell.....	11,800.00	11,800.00	
First Bank of Council.....	12,055.42		
C. R. Hudson, et. al.....	83,570.03		
[372—42]			
Deschutes Investment Co.....	15,000.00		
Northwest Fruit Products Co.....	46,470.00		46,470.00
Total Loans.....	\$1,294,088.92	\$358,550.50	496,917.28



	Non-bankable.	Doubtful.	Losses.
6% profit sharing bond, Realty Assn. of..			
Portland .....			
(\$500)	403.25	403.25	
52,400 bonds N. W. Fruit Products Co.....	51,500.00		25,750.00
11,050 bonds N. W. Fruit Union.....	11,050.00		
327,000 bonds Dufur Fruit & Farm Co.....	267,000.00		113,820.00
Reedsport Lbr. Co. (Claim).....	31,038.50		
Stockgrowers Finance Corp.....	640.00	640.00	
12 shs. Puget Sound National Bank.....	1,450.00		
125 shs. Portland Artificial Ice Co.....	46,338.87		
1199 Shs. Boulder Creek Lbr. Co.....	76,490.00		
200 shs. Davin Michellod Sheep & Land Co.	273,259.97		73,259.97
Judgment vs. Oregon Agricultural Co.....	30,874.99	30,874.99	

	Non-bankable.	Doubtful.	Losses.
Judgment vs. J. W. Siemens.....	35,120.00		
Bi-State Inv. Co.....	501,985.55	100,000.00	100,000.00
<hr/>			
Total securities.....	\$1,327,151.12	131,918.24	312,928.97
Other Real Estate.....	145,156.85		
<b>RECAPITULATION:</b>			
Loans .....	1,294,088.92	358,550.50	496,917.28
Securities .....	1,327,151.13	131,918.24	312,829.97
Other real estate.....	145,156.85		
<hr/>			
Grand total .....	\$2,766,396.90	490,468.74	809,747.25

Your officers have not concurred in these classifications, however the condition of your institution as I see it, is here presented for your consideration. Losses estimated impairs your capital in the sum of \$237,460.78, the only legal means for the restoration of which is an assessment which would not only cause unfavorable comment but would leave the Bank without a surplus fund and I am sure that some voluntary means may be found for relieving the bank of these questioned assets so that an assessment may be avoided. A year ago, based upon appraisals made by the examiner who then examined your Bank, I suggested the organization of a corporation with a capital of not less than \$500,000, the proceeds to be used for elimination of bad and undesirable assets. A closer inspection of your assets has convinced me that if dividends are to be resumed within the near future, which I believe it essential that you do, a minimum [373—43] of \$1,000,000 should be provided at this time for elimination purposes.

With the elimination of \$1,000,000 of non-bankable assets at this time, and this is the minimum elimination I am willing to consider without the previous approval of the Comptroller, you will continue to carry a very large volume of frozen assets, but these, properly handled, should be worked out with small if any loss over a period of years. Liquidation of \$1,000,000 of non-producing assets should increase your earnings at least \$50,000 per annum, and would, I think, justify the resumption of dividends of 5% to 6%, or around 60% of your net

earnings on operations. In my opinion it would be a serious mistake for you to put into effect any sort of a reorganization program at this time that is not entirely adequate for the removal of all possible losses and doubtful assets so that dividends may be assured and that your Bank may take its proper place among metropolitan institutions.

Respectfully,

T. E. HARRIS,

Chief National Bank Examiner, 12th Federal Reserve District."

(R., 154,158.)

Following the Harris letters the Comptroller of the Currency wrote the board of directors, December 2, 1926, as follows:

"TREASURY DEPARTMENT,

Washington.

December 2, 1926.

Board of Directors,

Northwestern National Bank,

Portland, Oregon.

Dear Sirs:

The report of an examination of the Bank by Chief Examiner T. E. Harris, completed on October 26, has been received and shows, as you will note by reference to page 11 of the report, a copy of which should be in your possession, that assets amounting to \$507,968.74 have been classified as doubtful and \$809,774.12 as worthless.

The amount of assets classed as doubtful has declined somewhat since the previous examination but

the amount of those classified as losses has increased many times since then. Although the aggregate of criticised assets, including those regarded as slow, has shown a declining tendency for the past several years, each report shows that assets previously regarded as slow or doubtful have, in the opinion of the examiner, developed into losses. The result, of course, is to confirm the opinion previously entertained by this office that criticized assets as a whole were of a much lower grade than was indicated by the reports and lower also than they were believed to be by the directors.

The examiner states that more than \$2,000,000 of the assets are productive of no revenue, which alone [374—44] is a strong indication that that amount is of a decidedly sub-standard character. When, therefore, his estimates of doubtful and worthless assets are remembered, his position that at least a million dollars of the losses and remaining more objectionable assets should be removed, is believed well taken. This office is in doubt as to whether that amount will be sufficient but it is certainly no less than should be removed and this office will expect that action be taken to comply with the examiner's recommendations.

As soon as possible after receipt of this letter you are requested to convene at a special meeting, to give the examiner's report consideration and to promptly advise this office what program has been outlined by which the losses and the most objectionable of the doubtful assets will be removed.

The report, as you know, shows an impairment of

the capital. This office desires, however, to cooperate with the board to as great an extent as is consistent with its responsibilities and will for the moment withhold issuance of a formal impairment notice, pending receipt of advices from you regarding your plans for meeting the situation. You are requested, however, to be prompt in whatever action you propose to take.

Please forward a copy of your reply to this letter to Chief National Bank Examiner, T. E. Harris, 1103 Alexander Building, San Francisco, California.

Respectfully,

(Signed) E. W. STEARNS,  
Deputy Comptroller.”

(R., 161-62.) [375-45]

#### TESTIMONY OF M. SKINNER, FOR COMPLAINANTS.

It is the evidence of the witness SKINNER that between the 18th day of May, 1926, and throughout the year 1926, the board of directors did not consider the Examining Committee's report, and there was no report considered by any of the board of directors or was made by the Examining Committee until February 16, 1927, for the year 1926, and the evidence is that the written statement of the Examining Committee of December 7, 1926, considered February 16, 1927, as presented by the Committee, Spaulding, Metschan and Charlton was as follows:

(Testimony of M. Skinner.)

“Portland, Oregon, December 7, 1926.

To the Board of Directors The Northwestern National Bank of Portland, Portland, Oregon.

Gentlemen:

We, your Examining Committee, appointed at the annual meeting, beg leave to report that on November 19th to December 1st we made a full and careful examination of the affairs of this bank as of date.

We counted the cash, examined the bonds and all other securities; we checked the notes; collateral and real estate; checked the outstanding and certified checks, cashier's checks, the Time and Demand Certificates of Deposit and overdrafts; we verified the outstanding stock certificates; verified the first clearings; examined the Expense Account and general affairs of the Bank, making a full and careful examination of same. We found the books correct.

We recommend that the stockholders organize a corporation for the purpose of taking out of the Bank assets that we consider frozen, and which should be liquidated in an orderly manner.

When this is done, we would recommend the bank resume the paying of reasonable dividends.

(Signed) CHAS. K. SPAULDING.

PHIL METSCHAN.

A. D. CHARLTON.”

(R., 137.)

And there was no other report made to the board of directors by the Examining Committee in the year 1927. [376—46]

(Testimony of M. Skinner.)

On December 11, 1926, the board of directors held a special meeting about the Harris report of September 21, 1926, Mr. Harris being present, at which time the following proceedings were had:

“At a special meeting of the Board of Directors of The Northwestern National Bank of Portland, held this date, there were present Messrs. O. L. Price, Emery Olmstead, A. D. Charlton, Phil Metschan, C. K. Spaulding, F. F. Pittock, E. S. Collins, Natt McDougall, Chas. H. Stewart and M. Skinner, Mr. Price presiding.

Mr. T. E. Harris, Chief National Bank Examiner of the Twelfth Federal Reserve District, attended the meeting and discussed with the members of the Board his recent examination of the affairs of the Bank. The various items listed for comment and criticism in the Examiner's letter of October 22nd were given special attention, and the suggestion that a company be organized for the purpose of removing from the bank certain slow and criticised assets, was approved by the Board substantially as outlined in said letter.

There being no further business to come before the meeting it then adjourned.

(Signed) O. L. Price,  
Chairman.”

The witness SKINNER testified that there was no other action by the Board on the December 2, 1926, letter than appeared as of the December 11th meeting.



(Testimony of M. Skinner.)

On January 11, 1927, the witness testified that Mr. Morden placed in nomination the directors, Charlton, Collins, McDougall, Chauncey McCormick, Olmstead, Pittock, Price, Skinner, Spaulding, Stewart, Twohy and Metschan, and that on January 11, 1927, the Comptroller's letter of December 2, 1926, was then read to the board and at the same time the official copy of the Examiner's report of September 1, 1926, was presented to the directors. No action was taken by the board officially upon this matter. [377—47] (R., 170.)

It then appeared from the evidence that on the 5th day of March, 1927, another examination of the Bank had been had by Chief Examiner Harris, and thereafter and on the 18th day of March 1927, the board of directors of this Bank wrote the Comptroller of the Currency at Washington, D. C., as follows:

“March 18, 1927.

Comptroller of the Currency,  
Washington, D. C.,

Sir:

Following the completion of his examination of this institution as of March 5, 1927, Chief Examiner, T. E. Harris has invited our attention to the various matters herein referred to with the request that we write you concerning them:

Losses Estimated \$2,446,769.65

This estimate of losses is in excess of the capital, surplus and profits by \$2,859.10, and makes neces-

sary an assessment of 100%. We are unanimous in the request that you immediately issue formal notice of impairment of capital, together with the necessary instructions, that we may proceed to collect the assessment if we find that we cannot obtain unanimous consent of shareholders to voluntarily restore the capital.

Losses estimated will be charged off and an account opened 'Due from Stockholders on Account of Assessment,' which will be charged \$2,000,000. In the event a report of condition is called for prior to the collection of the assessment, this item will be shown as "Other Assets" as instructed by your Examiner.

The payment of an assessment of 100% has guaranteed by certain responsible shareholders, a copy of which guarantee is submitted herewith.

This bank has been under criticism from your Department for a number of years and particularly so since the acquisition of the old Merchants National Bank's assets. It has acquired a volume sufficient to produce a splendid net profit on operations. With the elimination of nearly \$2,500,000 of income producing assets its earnings should be materially improved, so that earnings of 15% or more may be confidently expected. We assure you that the credit policies of this bank henceforth will be conservative so that earnings may be used for dividend purposes and reflected in individual profits, after eliminating any losses that may [378—48] possibly develop in assets now owned,

though we believe these, if any, will be offset by recoveries.

The assessment destroys our surplus fund of \$400,000. With all our past difficulties we have succeeded in maintaining the confidence of the public. It is apparent now that we are losing a few small accounts, chiefly savings accounts. This is a situation that is hard to meet. We do not want to go to the public with a published statement showing no surplus. We have no fault to find with the classification of assets made by your examiner, though we do believe that in time we will make substantial recoveries on certain items estimated as losses. We admit all items so classified are non-bankable and should be removed.

It is our desires to put all charged off assets into a corporation, all of the stock of which will be trusted for the benefit of shareholders of the bank, and have this corporation execute its note to the bank for \$400,000, which amount will be put into recoveries and transferred to surplus. Your Examiner has agreed with us to recommend that we be permitted to do this, with your approval, provided the note be made to mature in two years, when it must be eliminated, and, provided further, that each of the directors will unconditionally guarantee that after applying all recoveries from the assets owned by this corporation, and after applying all undivided profits on hand on the date of the maturity of its note (keeping the \$400,000 surplus fund

intact) any balance due thereon will be taken up by the directors individually.

Our only objection to this program is the fact that some of our directors are men of large affairs, who sometimes borrow for themselves or use their credit for the benefit of their respective interests, and the liability incurred as above would detract from their financial statements and hamper them in their individual efforts. We will appreciate a counter suggestion from you, as to how this problem may best be solved.

It has been brought to our attention that losses have been estimated on loans classed as excessive, and the directors have been requested to remove these losses personally. We are furthermore advised that under a law a director becomes personally liable for such losses upon a suit by any shareholder or a receiver, when the loans were approved or acquiesced in by him and under a proper showing of negligence. We do not admit any liability in this connection. While there are excessive loans in the bank there are mitigating circumstances and at least one of the loans became excessive in direct violation of a resolution of this board.

Your examiner has informed us that the only legal means for the restoration of capital in a national bank is by way of assessment,—the only means he can insist upon. He has seriously recommended, however, that we consider the organization of a new institution, which he assures us can be accomplished in a very short time, to take over the

(Testimony of M. Skinner.)

business of this bank. By this method it is pointed out that we may now provide a surplus fund,—making an announcement [379—49] to the public that should inspire confidence,—avoid the comments incident to an assessment (which must cover a period of some four months) end the advertisement and sale of stock of delinquent shareholders. We will give this suggestion full consideration, but at present we want to proceed with an assessment on the stock.

Some months ago you suggested that we consider a change in the management. A change recently occurred by the resignation of one of our active officers whom we believe to be the one referred to in your letter.

Respectfully,

M. SKINNER,	O. L. PRICE,
E. S. COLLINS,	A. D. CHARLTON,
C. K. SPAULDING,	PHIL METSCHAN,
NATT McDOUGALL,	JAMES F. TWOHY,
CHAS. H. STEWART,	F. F. PITTOCK,
	Directors.”

(R., 166-169.)

Upon this subject the following questions were put to the witness and the following answers were given:

Q. Now then will you look at page 437 and show me any place up to this letter of December 2, 1926, which I called your attention to, which you said you couldn't find, where there is any action by the Board

(Testimony of M. Skinner.)

concerning the subject matter first suggested to the Comptroller on March 18, 1927?

Mr. HART.—I have no doubt that may be a correct question, but it is confusing, I think, in that the letter of March 18, 1927, just read, didn't deal precisely with the same subject that was talked of in the Comptroller's letter, in that much had transpired in that interim. As your Honor knows, the flat had been discovered, and a vastly different situation was presented.

Mr. BRISTOL.—If your Honor thinks my question at all confusing, I will change it.

Q. Will you show me please where the subject matter dealt with in the letter of March 18, 1927, that I have just read—you understand that question, don't you—is dealt with by the Board in any official action since the meeting of January 11, 1927; any place; I don't care whether in the front of the book, the back, of the book, or anywhere else; just show me. A. I don't find any.

Q. Is there any, to your knowledge, being a director? A. I do not think so, officially.

Q. Now then, will you please look. Now, you held a meeting of the stockholders on January 11th, preceding that letter of March 18th, that I read, didn't you? A. Yes, sir. [380—50]

Q. Will you look at the stockholders meeting, the minutes of that meeting of January 11, 1927, and now refresh your recollection there, and see if you can point out any official action of the stockholders of that bank authorizing the directors to go to and

(Testimony of M. Skinner.)

into the subject matter and do the acts or things that are referred to in the letter of March 18, 1927. I am asking you about the stockholders action this time? A. No, sir, nothing in there.

Q. Is there any between January 11, 1927, that you know of, or can tell me about, that might by omission or oversight or any other way, not get into this book of stockholders meetings prior to the letter shown on page 437, of March 18, 1927?

A. No, sir.

Q. You are sure there wasn't any, aren't you? You are sure there were no stockholders meetings.

A. I do not recall it.

Q. You would recall it if such a thing had been held? A. It would be in here I am sure.

Q. You are secretary of the board? A. Yes.

Q. So you can say positively it was not held, can't you? A. I think I can.

Q. You won't forget to get me the copy of that guaranty? I want it to go with this letter?

A. I have a memorandum of it.

Q. Now, I want you to look and see if on the 29th day of March,—the very next action after the letter of March 18, 1927, on page 437, that I can find in the book, seems to be at page 438 and I ask if that is the next official action of the board of directors of that bank? A. Yes, sir.

Q. And it purports to show that you signed it as secretary. A. Yes, sir.

Q. It bears your signature. Now, there was no other action of the board officially recorded any-

(Testimony of M. Skinner.)

where, was there, between March 18, 1927, and March 29, 1927? A. Not as a full board.

Q. Well, was there any minutes recorded anywhere of any kind of a board?

A. I would have to look that up.

Q. How long would that take you?

A. Just a second.

Q. What is in it? Do you mean it was in this book?

A. It might be; I don't recall when we stopped using it.

Q. This seems to show nothing in there after March 22, 1927.

A. That was the point I wanted to find out.

Q. I am going into this when I come to it, so we won't have you in any place where you haven't a full opportunity to tell us all that you may know about it. A. Apparently there was not.

Q. Then we can say that the next official action of the board of this bank, these directors that we [381—51] have been talking about, after the 18th of March, page 437, is the minutes on page 438?

A. Yes, sir.

Mr. BRISTOL.—I offer in evidence the record on page 438, special meeting of the board of directors.

MINUTES OF SPECIAL MEETING OF BOARD  
OF DIRECTORS OF THE NORTHWEST-  
ERN NATIONAL BANK.

A special meeting of the board of directors of



the Northwestern National Bank of Portland, Oregon, was duly held at the banking house of said bank at the corner of Sixth and Morrison Streets, in the City of Portland, this 29th day of March, 1927, at 9 o'clock A. M.

The following directors were present;

O. L. Price	A. D. Charlton
E. S. Collins	M. Skinner
Phil Metschan	Charles H. Stewart
Chas. K. Spaulding	Natt McDougall

Directors Chauncey L. McCormick, F. F. Pittock and James F. Twohy were absent from the state.

President O. L. Price presided and the secretary, M. Skinner, kept the minutes of the meeting.

There was thereupon presented to the meeting a draft of contract between the Northwestern National Bank of the one part and the First National Bank of Portland and The United States National Bank of Portland, of the other part, in the form of a proposal and a proposed acceptance, providing for the sale of all assets of The Northwestern National Bank and the assumption of certain liabilities of said bank by The First National Bank and The United States National Bank.

Thereupon a resolution was offered by Mr. Phil Metschan who moved its adoption, which motion was seconded by Mr. A. D. Charlton and said resolution was unanimously adopted, and by said resolution it was unanimously

RESOLVED that the president and secretary of the Northwestern National Bank be and they are hereby authorized and directed to execute and de-

liver to The First National Bank of Portland and the United States National Bank of Portland, a written proposal in the form now submitted to the meeting, and that said form so submitted to the meeting be preserved in the record book of this bank.

Thereupon a resolution was offered by Mr. C. K. Spaulding who moved its adoption, which motion was seconded by Mr. Chas. H. Stewart, which resolution is in words and figures as follows, to wit:

WHEREAS, heretofore during the month of March 1927, various stockholders of the Northwestern National Bank of Portland, Oregon, have made advances to said bank, in the aggregate sum of one million dollars, to be held by said bank as a guarantee for the payment of various and sundry obligations owing to said bank which have heretofore been criticised as undesirable assets of said bank and

WHEREAS it is anticipated that upon the sale and disposition of such criticised assets, a substantial sum will be realized and [382—52]

WHEREAS by virtue of said advance of said stockholders, the said bank became indebted in the amount above set forth.

NOW, THEREFORE, be it resolved that the officers of said bank be and they are hereby authorized to execute and deliver to MARK SKINNER as Agent representing said stockholders who have made such advances, a non-negotiable promissory note of this bank in said sum of one million dollars, payable upon demand after all liabilities of said

(Testimony of M. Skinner.)

bank to its depositors and others than to said stockholders, shall have been paid.

Thereupon a resolution was unanimously adopted by the vote of all the directors present.

Thereupon a resolution was offered by Mr. Phil Metschan who moved its adoption, which motion was seconded by Mr. Natt McDougall, which resolution is in words and figures as follows, to-wit:

WHEREAS, C. A. Morden and O. L. Price, Trustees of the Estate of Henry L. Pittock, have paid to the Northwestern National Bank of Portland, Oregon, the sum of one million (\$1,000,000) dollars. NOW THEREFORE be it resolved that the officers of said bank be and they are hereby authorized to execute and deliver to said C. A. Morden and O. L. Price as such Trustees, the non-negotiable promissory note of this bank in the sum of one million (\$1,000,000) dollars, payable upon demand after all liabilities of said bank to its depositors and to others than its stockholders, shall have been paid.

Thereupon said resolution was unanimously adopted by the vote of all the directors present.

There being no further business the meeting thereupon adjourned.

M. SKINNER,  
(Signed)  
Secretary. )

Q. That is your signature.      A. Yes.

Q. Now as part of this have you got the agreement that was proposed and mentioned in here in

(Testimony of M. Skinner.)

the first resolution, or a copy of the same?

A. I have a copy.

Q. I would like to see it please. And secondly, have you the note which is made to Mark Skinner, or copy thereof, the non-negotiable note of the bank in the sum of \$1,000,000.

A. I have a copy of it.

Q. I would like to see a copy of that, provided Mr. Hart does not object to the copy instead of the original instrument?

A. These are the copies of the notes, respective notes referred to. What you want now is the bank agreement. I think this is it.

Q. Now, you are sure this is the one. I call your attention—please don't misunderstand, that this is the one that is in compliance with resolution on the second sheet, that says, "In said form so submitted to the meeting be preserved in the Record Book of this Bank." In other words there is no such contract as you are talking about in the record book of this Bank, is there? [383—53]

A. Apparently not.

Q. Now, what I want to be sure about is that the contract you are producing is the very contract that was to be at that time in the book of this bank?

A. Yes, sir.

Q. Is that it? A. Yes, sir.

Q. Now, in connection with the resolution of this Board as it was intended to be in the record, I read this agreement. You say these two papers are the notes referred to? A. Yes, sir.

Mr. BRISTOL.—I offer this agreement, handed to me by the witness, under the circumstances delineated by the witness in the testimony, as part of the same proceedings page 438 of the board of directors.

“To First National Bank of Portland, Oregon, and United States National Bank of Portland Oregon.

Gentlemen:

The undersigned, The Northwestern National Bank of Portland, Oregon, hereby proposes to sell, assign and convey to you all of its assets of any name and nature in consideration of your assuming and agreeing to pay all of its liabilities, including liabilities to depositors, but excepting from said agreement to assume and pay two certain notes bearing even date herewith each non-negotiable in form; one for one million dollars (\$1,000,000) payable to C. A. Morden and O. L. Price, trustees, and the other for one million (\$1,000,000) payable to Mark Skinner, agent, executed by The Northwestern National Bank of Portland; and excepting any liability to any shareholders of said Northwestern National Bank of Portland. It is further understood that you will liquidate and convert into cash all of the assets so sold and transferred which may be necessary to pay those liabilities so assumed by you and the reasonable expenses of such liquidation and shall thereupon re-assign and re-convey to the undersigned all such assets then remaining.

It is especially agreed by C. A. Morden and

O. L. Price, trustees, and Mark Skinner, agent, that if said assets so sold and transferred shall be insufficient when liquidated to pay each and all of said liabilities so assumed, said notes and each of them shall be held for naught as to said First National Bank and said United States National Bank, and to evidence this agreement, C. A. Morden and O. L. Price, trustees, and Mark Skinner, agent, hereunto set their signatures as such. Your acceptance of this proposal shall vest in you the title to all such assets and shall bind you to assume and pay the liabilities above assumed but not those especially excepted as aforesaid. The Northwestern National Bank of Portland hereby guarantees to First National Bank and United States National Bank each and every asset so turned over and delivered, which guaranty shall be prior in right and prior in time to any liability by Northwestern National Bank upon said non-negotiable notes to C. A. Morden and O. L. Price, trustees, and [384—54] Mark Skinner, Agent.

This instrument is executed pursuant to the unanimous vote so authorized, of a majority of the Board of Directors of the Northwestern National Bank, as appears in the records of said Board in its minute book and by the signature of said Directors appended hereto.

Said directors further agree to forthwith call a special meeting of the stockholders of The Northwestern National Bank for the purpose of adopting a resolutions or resolutions ratifying the sale afore-

said and this agreement and the passage of any other resolutions germane thereto. Stockholders holding the number of shares of the outstanding capital stock of The Northwestern National Bank of Portland set opposite their respective names, join in the execution thereof as evidence of their approval thereof and append to their signatures the number of shares they respectively own and hold therein, and agree at said special stockholders' meeting to be called for said purpose, to vote affirmatively upon resolutions approving said sale, and this agreement and any other resolutions germane thereto.

Yours very truly,

THE NORTHWESTERN NATIONAL  
BANK OF PORTLAND.

By O. L. PRICE,  
President.

Corporate Seal.

Attest: M. SKINNER,  
Secy.

The foregoing proposal is hereby accepted:

THE UNITED STATES NATIONAL  
BANK OF PORTLAND.

By J. C. AINSWORTH,  
President.

THE FIRST NATIONAL BANK OF  
PORTLAND.

By A. L. MILLS,  
President.

Dated March 29, 1927."

Signatures of Stockholders.	Number of Shares.
C. A. Morden .....	
O. L. Price Trustees.....	7696
O. L. Price .....	290
E. S. Collins .....	760
M. Skinner .....	50
Phil Metschan .....	100
Natt McDougall .....	300
A. D. Charlton .....	250
Chas. H. Stewart .....	65
C. K. Spaulding .....	200
James B. Kerr .....	100
J. E. Wheeler.....	4700
Emery Olmstead .....	1085
Emery Olmstead, trustee .....	150

In consideration of the foregoing agreements on the part of the First National Bank and the United States National Bank of Portland, the undersigned directors and stockholders of Northwestern National Bank of Portland jointly and severally guarantee to said First National Bank of Portland and said the United States National Bank of Portland each and all of said assets transferred as hereinbefore set forth to the maximum extent of two million dollars (\$2,000,000) in addition to all other [385—55] agreements hereinbefore contained, payable as called for at any time after twelve (12) months from date. Any asset which First National Bank and United States National Bank deem wise to compromise, sell or dispose of for less than its face value, or in case of real estate to sell for less than its present



(Testimony of M. Skinner.)

book value, shall first be offered to said guarantors at said proposed sale price and said guarantors shall have five (5) days after said notice, to themselves purchase the same at said price and failure to so purchase within said time shall be deemed an approval by said guarantors of said sale at said price. No such sale shall be deemed to diminish said guarantee in amount as to any assets remaining unliquidated nor shall this guarantee be otherwise diminished than by the full repayment from said assets, the stockholders statutory double liability and this guarantee, of all monies expended hereunder by said First National Bank and United States National Bank. Notices required hereunder shall be sufficient if sent to O. L. Price one of said guarantors at his office in Portland, Oregon, by United States mail. This guarantee is attached to and a part of contract of even date herewith between the Northwestern National Bank of Portland and the First National Bank of Portland and the United States National Bank of Portland.

Dated March 29, 1927.

NATT McDOUGALL,

C. A. Morden.)

O. L. Price. ) Trustees

O. L. Price.

A. D. Charlton.

E. S. Collins.

Chas. H. Stewart.

M. Skinner.

C. K. Spaulding.

Phil Metschan.”

NATT McDOUGALL.

“Q. I take it that those were the original signa-

(Testimony of M. Skinner.)

tures on there that you saw put on? A. Yes, sir.

Q. Now, I ask you for the two notes, and in pursuance of the second page of the resolution on page 438, this is the note, is it, that was made to Mark Skinner, Agent?

A. This is a copy, yes. This is a correct copy.

Q. Now can you tell me whether that note bore the seal of the Northwestern National Bank?

A. The copy indicates that it did. I presume that it did.

Q. Your copy indicates here that it did?

A. Yes.

Q. Did you make that copy?

A. No, Mr. Kerr's office made that for me.

Q. And that being the first one referred to, it is offered in evidence.

Portland, Oregon, March 29, 1927.

For value received the Northwestern National Bank of Portland, Oregon, promises to pay to the order of Mark Skinner, Agent, the sum of one million dollars (\$1,000,000) with interest at the rate of six per cent per annum from the date hereof, payable on demand, when and only when from the proceeds of the liquidation of the assets of said payer this date transferred to the First National Bank [386—56] of Portland and the United States National Bank of Portland, all pursuant to contemporaneous guaranty of the payers, said last named banks have realized sufficient to fully liquidate the liabilities of the payer assumed under

(Testimony of M. Skinner.)

contract of even date with the payer. In case suit or action is instituted to collect this note or any part thereof, the said corporation promises to pay such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action. In witness whereof the said corporation under authority of resolution of its Board of Directors has caused this note to be executed by its duly authorized agents.

THE NORTHWESTERN NATIONAL  
BANK OF PORTLAND.

By O. L. PRICE,  
President.

Q. Attest who?

A. It is not given there.

Q. Well did you attest it, or who did?

A. I don't recall that.

Q. Who put the seal on?

A. I don't know why it should not show there.

Q. It doesn't, that is why I ask you.

A. Those facts can be ascertained.

Q. Well, who from?     A. From the original.

Q. Well, Mr. Skinner, here is what I am after. I think you understand it. Here is the resolution of the Board which says that this particular note, the one I am talking about in the resolution which is a part of these minutes, should be executed to you. Now it doesn't say in the resolution—I am not arguing with you, I am just explaining—who was to execute it. Over here, in the same manner, the other note you see is described as to O. L. Price and C. A.

(Testimony of M. Skinner.)

Morden, or the Pittock Estate, but it does not say anything about who is to execute it. Now it is the Bank who is to give the note, isn't it?

A. Certainly.

Q. Who were the bank officers and signed the papers at that time? You were secretary of what, of the Bank? A. Of the board.

Q. You were secretary of the board. Who was secretary of the Bank?

A. There was no such officer.

Q. Well, who signed those shares of stock in 1927? Let's get that book and find out.

A. The book of shares is not there.

Q. What?

A. The book of shares you said you did not want.

Q. No, but I want to refresh your recollection.

A. If I remember, would be signed by the cashier of the Bank?

Q. F. O. Bates?

A. At that time he was cashier, yes.

Q. Did you say he signed that note? A. No.

Mr. HART.—What is the trouble? Let's get the original, if any question about how they were signed or executed.

Mr. BRISTOL.—Well, Mr. Hart there is no trouble. I want to know who signed it. [387—57]

COURT.—Have you the originals?

Mr. HART.—The originals are in safekeeping in the safety deposit. They can be produced.

(Testimony of M. Skinner.)

Mr. BRISTOL.—Doesn't the witness know who signed it?

Mr. HART.—I don't know what his recollection may be.

Mr. BRISTOL.—Do you know who signed it?

Mr. HART.—I do not.

Mr. BRISTOL.—I insist upon knowing who signed it and put the seal on it.

A. I might state I will be glad to get that information." (R., 170-1)

Q. Now this is a note you handed me that you say is one made at the same time to C. A. Morden and O. L. Price, trustees? A. Yes, sir.

Q. In conformity with those resolutions on page 438. A. Yes, sir.

Portland, Oregon, March 29, 1927.

FOR VALUE RECEIVED the Northwestern National Bank of Portland, Oregon, promises to pay C. A. Morden and O. L. Price, Trustees, the sum of one million dollars (\$1,000,000) with interest at the rate of six per cent per annum from the date herein, payable on demand when and only when from the proceeds of the liquidation of the assets of said payer this day transferred to the First National Bank of Portland and the United States National Bank of Portland, all pursuant to the contemporaneous guaranty of the payer, said last named banks have realized sufficient to fully liquidate the liabilities of the payer assumed under contract of even date with the payer. In case suit

(Testimony of M. Skinner.)

or action is instituted to collect this note or any part thereof the said corporation promises to pay such additional sum as the Court may adjudge reasonable as attorneys' fees in said suit or action. In Witness Whereof the said corporation under authority of resolution of its Board of Directors has caused this note to be executed by its duly authorized officers.

THE NORTHWESTERN NATIONAL  
BANK OF PORTLAND.

By O. L. PRICE,  
President.

Q. Attested by whom? You give the same answer as the other? A. Yes." (R., 186-187.)

The next step, as shown by the evidence, of the board of directors was their special meeting April 6, 1927, wherein Price, Stewart, Collins, Spaulding, Metschan and Skinner authorized Stewart to dispose of certain bonds held by the Treasury of the United States as security for certain bank funds and enabling Charles H. Stewart to sell and dispose of the same, the aggregate of said bonds being as set [388-58] forth in the resolution \$343,500.00; and thereupon at another special meeting of the board of directors on April 15, 1927, at which were present Price, Spaulding, Collins, Stewart, Pittock, Charlton and Skinner the president reported to the board in detail the status of the bank's affairs, and the directors discussed plans for the liquidation of the bank's business.

The witness SKINNER then testified that there

were no other records of meetings of either the executive committee or of the board.

It then appeared from the evidence that there was a special meeting of stockholders held on the 3d day of May, 1927, at which there were 16,955 shares, computed as follows:

L. Price and	
A. Morden, Trustees in person.....	7696 shares
S. Collins in person.....	760 "
L. Price in person.....	290 "
F. Pittock in person.....	175 "
F. Emery in person.....	100 "
mes B. Kerr in person.....	250 "
D. Charlton in person.....	50 "
Skinner in person.....	10 "
Matthew Harris in person.....	65 "
ce W. Nelson by Palmer L. Fales, proxy.....	5 "
tt McDougall by Palmer L. Fales, proxy.....	300 "
D. McDougall by Palmer L. Fales, proxy.....	100 "
W. Wheeler by Palmer L. Fales, proxy.....	4700 "
il Metschan by Palmer L. Fales, proxy.....	100 "
gar B. Piper by Palmer L. Fales, proxy.....	50 "
ong On by Palmer L. Fales, proxy.....	25 "
D. Johnson by Palmer L. Fales, proxy.....	100 "
ancis P. Graves & Co. by Palmer L. Fales, proxy.	200 "
G. McFee by Palmer L. Fales, proxy.....	16 "
as. G. Treat by Palmer L. Fales, proxy.....	120 "
kerman Williams by Palmer L. Fales, proxy...	20 "
mie C. Cotton By James G. Wilson, proxy.....	30 "
ce E. Griffith by John F. Reilly, proxy.....	10 "
te P. Hebard By Lockwood Hebard, proxy.....	100 "
san P. Emery By E. Fred Emery, proxy.....	148 "

R. A. Long By S. M. Morris, proxy.....	100
Emery Olmstead by Chas. E. McCulloch, proxy....	1185
Emery Olmstead, trustee, by Chas. E. McCulloch proxy .....	150
<hr/>	
Total shares present in person and by proxy.....	16955

[389—59]

Proof of notice of the meeting as mailed was sent out and this notice was dated the 31st day of March, 1927, and was as follows:

“March 31st, 1927.

Dear Sir:

In accordance with the by-laws of the Northwestern National Bank of Portland (Oregon), you are hereby notified that a special meeting of the shareholders of the Northwestern National Bank of Portland will be held on Tuesday, May 3rd, 1927, at the hour of 10:30 o'clock in the forenoon, at the banking rooms of said bank on Morrison Street, between Sixth Street and Broadway, in the City of Portland, Oregon, for the following purposes:

1. To vote upon a resolution in the form prescribed by the Comptroller of the Currency to place this bank in voluntary liquidation under sections 5220 and 5221, United States Revised Statutes, to take effect at once.

2. To appoint, under said resolution, O. L. Price, now president of this bank, as liquidating agent;

3. To vote upon a further resolution ratifying, approving and confirming the action of the board



of directors, at its special meeting held March 29, 1927, in voting to sell all of its assets to the First National Bank of Portland (Oregon) and the United States National Bank of Portland (Oregon), and authorizing its president and secretary to enter into a contract with said First National Bank of Portland and said The United States National Bank of Portland in the form of a written proposal, accepted in writing by said First National Bank of Portland and said The United States National Bank of Portland, under and by virtue of which said board of directors caused said assets of this bank to be delivered to said First National Bank of Portland and said The United States National Bank of Portland, guaranteed by this bank, and the said First National Bank of Portland and said The United States National Bank of Portland agreed to liquidate and convert the same into cash, and to pay all of the liabilities of this bank including liabilities to depositors, but not including the liability of this bank for \$2,000,000 advanced by certain of its shareholders, and not including any liability to shareholders of this bank; and to thereby prevent the closing of this bank with great resulting loss and injury to depositors, as a consequence of the disastrous run in progress at the time of the adoption of said directors' resolution, which contract was contemporaneously approved in writing by shareholders of this bank owning and holding more than two thirds of its capital stock.

4. To adopt such further and additional resolu-

tions, if necessary, in any respect germane to any of the foregoing.

You are further advised that said action of the board of directors and officers of this Bank, [390—60] hereinbefore set forth, was done upon the advice, and with the approval of United States Banking Examiner William C. Crawley, and Chief National Bank Examiner T. E. Harris.

Enclosed herein is a written proxy, which kindly execute and return in the enclosed stamped envelope, at your early convenience.

Yours very truly,

NORTHWESTERN NATIONAL BANK  
OF PORTLAND.

By FRANK C. BATES,

Cashier.

NORTHWESTERN NATIONAL BANK  
OF PORTLAND.

By M. SKINNER,

Secretary.”

Thereupon on the motion of Fales, proxy for the above mentioned stock, seconded by Jas. B. Kerr, the following resolutions were adopted and proceedings had:

“Resolved, That The Northwestern National Bank of Portland be placed in voluntary liquidation under the provisions of Sections 5220 and 5221 of the United States Revised Statutes, to take effect at once, and that O. L. Price, now president of said bank, be appointed liquidating agent or liquidation committee of said bank; that liquidation shall be conducted in accordance with law and under the

supervision of the board of directors, who shall require a suitable bond to be given by the said agent or committee in an amount to be fixed by the board of directors; that the said liquidating agent or committee shall render semi-annual reports to the Comptroller of the Currency on the 1st of April and October of each year showing the progress of said liquidation until said liquidation is completed; that said liquidating agent or committee shall render an annual report to the shareholders on the date fixed in the articles of association for said annual meeting, at which meeting the shareholders may, if they see fit, by a vote representing a majority of the entire stock of the bank, remove the liquidating agent or committee and appoint another in place thereof; that a special meeting of the shareholders may be called at any time in the manner as if the Bank continued an active bank, and at said meeting the shareholders may, by a vote of a majority of the stock, remove the liquidating agent or committee; that the Comptroller of the Currency is authorized to have an examination made at any time into the affairs of the liquidating bank until the claims of all creditors have been satisfied, and that the National Bank Examiner will be compensated [391—61] for his time and expense in making the examination in question.

The foregoing resolution was adopted by 16,915 votes, representing more than two-thirds of the capital stock of the association, no director, other officer, or employees having acted as proxy, with

shareholder Cotton, holding 30 shares, and shareholder Griffith holding 10 shares, voting 'no.'

Thereupon, proxy shareholder Fales moved, shareholder James B. Kerr seconded, and the following resolution was adopted:

Be it Resolved, that whereas, at a special meeting of the board of directors of the Northwestern National Bank of Portland held at the banking house on the 29th day of March, 1927, the following resolution was unanimously adopted:

'There was thereupon presented to the meeting a draft of contract between the Northwestern National Bank of the one part and The First National Bank of Portland and The United States National Bank of Portland, of the other part, in the form of a proposal and a proposed acceptance, providing for the sale of all assets of The Northwestern National Bank and the assumption of certain liabilities of said bank by The First National Bank and The United States National Bank.

Thereupon a resolution was offered by Mr. Phil Metschan who moved its adoption, which motion was seconded by Mr. A. D. Charlton and said resolution was unanimously adopted, and by said resolution it was unanimously

Resolved that the president and secretary of the Northwestern National Bank be and they are hereby authorized and directed to execute and deliver to The First National Bank of Portland a written proposal in the form now submitted to the meeting, and that said form so submitted to the meeting be

preserved in the record book of this bank'—  
and

Whereas, the contract in the form of a proposal and acceptance, as in said resolution referred to, was thereupon, in pursuance of the authority of said resolution of said board of directors, constituting more than a quorum thereof, duly executed, with the written approval thereon of the nine directors present at said meeting, and with the written approval thereon of shareholders holding 15,746 shares, and more than two thirds of the authorized and outstanding capital stock of this bank, and with the guaranty of directors and shareholders C. A. Morden and O. L. Price, Trustees, O. L. Price, E. S. Collins, M. Skinner, Phil Metschan, Natt McDougall, A. D. Charlton, Chas. H. Stewart and C. K. Spaulding, all as follows:  
[392—62]

To First National Bank of Portland, Oregon, and  
United States National Bank of Portland,  
Oregon.

Gentlemen:

The undersigned, The Northwestern National Bank of Portland, Oregon, hereby proposes to sell, assign and convey to you all of its assets of any name and nature in consideration of your assuming and agreeing to pay all of its liabilities, including liabilities to depositors, but excepting from said agreement to assume and pay, two certain notes bearing even date herewith, each non-negotiable in form, one for One Million Dollars (\$1,000,000) payable to C. A. Morden and O. L. Price, Trustees,

and the other for one million dollars (\$1,000,000) payable to Mark Skinner, Agent executed by The Northwestern National Bank of Portland; and excepting any liability to any shareholders of said Northwestern National Bank of Portland.

It is further understood that you will liquidate and convert into cash, all of the assets so sold and transferred which may be necessary to pay those liabilities so assumed by you and the reasonable expenses of such liquidation and shall thereupon re-assign and re-convey to the undersigned all such assets then remaining.

It is especially agreed by C. A. Morden and O. L. Price, trustees, and Mark Skinner, agent, that if said assets so sold and transferred shall be insufficient when liquidated to pay each and all of said liabilities so assumed, said notes and each of them shall be held for naught as to said First National Bank and said United States National Bank, and to evidence this agreement, C. A. Morden and O. L. Price, Trustees, and Mark Skinner, Agent, hereunto set their signatures as such.

Your acceptance of this proposal shall vest in you the title to all such assets and shall bind you to assume and pay the liabilities above assumed but not those especially excepted as aforesaid. The Northwestern National Bank of Portland hereby guarantees to First National Bank and United States National Bank each and every asset so turned over and delivered, which guaranty shall be prior in right and prior in time to any liability by Northwestern National Bank upon said non-

negotiable notes to C. A. Morden and O. L. Price, trustees, and Mark Skinner, agent.

This instrument is executed pursuant to the unanimous vote so authorized, of a majority of the board of directors of The Northwestern National Bank, as appears in the records of said Board in its minute book and by the signatures of said Directors appended thereto.

Said directors further agree to forthwith call a special meeting of the stockholders of The Northwestern National Bank, as appears in the records of said Board in its minute book and by the signatures of said directors appended thereto.

Said directors further agree to forthwith call a special meeting of the stockholders of the Northwestern National Bank for the purpose of adopting a resolution or resolutions ratifying the sale aforesaid and this agreement and the passage of any other resolutions germane thereto. Stockholders holding [393—63] the number of shares of the outstanding capital stock of The Northwestern National Bank of Portland set opposite their respective names, join in the execution hereof as evidence of their approval thereof and append to their signatures the number of shares they respectively own and hold therein, and agree at said special stockholders' meeting to be called for said purpose, to vote affirmatively upon resolutions approving said

sale, and this agreement and any other resolutions germane thereto.

Yours very truly,

THE NORTHWESTERN NATIONAL  
BANK OF PORTLAND.

By O. L. PRICE,  
President.

(Corporate Seal)

Attest:

M. SKINNER, Secy.

The foregoing proposal is hereby accepted:

THE UNITED STATES NATIONAL  
BANK OF PORTLAND.

By J. C. AINSWORTH,  
President.

THE FIRST NATIONAL BANK OF  
PORTLAND.

By A. L. MILLS,  
President.

Dated March 29, 1927.”

(R.200-204.)

It then appeared from the evidence that on the 31st day of March, 1927, the directors and guarantors had executed an instrument with the First National Bank of Portland and the United States National Bank of Portland providing that none of the assets of the Northwestern National Bank of Portland taken over by these banks should be compromised, sold or disposed of except on face value except on the notice therein prescribed, and that stocks and bonds comprising the assets should be sold at their market value except upon notice, and



in respect of this document the directors and guarantors then acting, Morden, Price, Collins, Skinner, Charlton, Metschan, Stewart, Spaulding and McDougall addressed to the First National Bank of Portland, Oregon, and the United States National Bank of Portland, Oregon, two communications or papers, [394—64] part of the same transaction under dates of April 5th and 12th, 1927, as follows, to wit:

Portland, Oregon, April 5, 1927.

First National Bank of Portland, and The United States National Bank of Portland.

Gentlemen:

The undersigned heretofore executed and delivered to you a certain guaranty dated March 29, 1927, guaranteeing the assets of the Northwestern National Bank of Portland, thereby warranting their legal assistance, that the same were worth their face and accrued interest, if any, and in the case of real estate worth its book value; for the purpose of assuring you of full reimbursement of all advances made or to be made by you in the payment of the obligations of the Northwestern National Bank of Portland assumed by you in the agreement referred to in said guaranty, which guaranty is in the maximum amount of \$2,000,000;

In view of the fact that some difficulty is being encountered in liquidating the assets because of the strict requirements of the law in regard to the rights of guarantors, which are in this instance working to the prejudice of the undersigned, we

deem it advisable to and do hereby authorize you to surrender any collateral heretofore held by the Northwestern National Bank of Portland as security for any obligation to it owing, upon the payment of the amount of the written obligation of the obligor for which such collateral is specifically held; and notwithstanding the general collateral provisions of said obligation; also to sell any stocks or bonds forming a part of the assets of said bank for the market value at the time of such sale, without any notice to us, but subject to the approval of O. L. Price, or his nominee, and do hereby waive protest, demand and notice of non-payment of any notes, trade acceptances or other evidence of indebtedness forming a part of the assets of said bank. It is understood, of course, that all of the assets of said Northwestern National Bank of Portland were transferred and delivered to you as collateral to secure the repayment of such advancements together with interest thereon at the rate of six per cent (6%) per annum from the time such advancements were made until they are repaid; and also the expenses incident to the liquidation of such assets; that in the event any surplus remains upon the liquidation of said assets after full repayment to you of the amounts hereinabove mentioned, it is to be turned over and delivered to the Northwestern National Bank of Portland; and in the event you have not been fully repaid your said advancements, with interest as aforesaid, and said expenses, by twelve (12) months from March 29, 1927, you have recourse against the undersigned guarantors,

jointly and severally to the extent of \$2,000,000; reserving to yourselves in addition recourse against [395—65] the assets of the Northwestern National Bank of Portland then remaining unliquidated, against the bank itself, and also against its shareholders upon their statutory double liability.

You are further advised that in the event it should in your discretion become advisable to advance any funds in order to protect and conserve the assets so turned over to you, especially in order to enable certain sheep companies, now debtors of said Northwestern National Bank of Portland, to complete their operations, and to enable certain ranch owners to complete the harvest of their crops, in order to enable them to derive sufficient funds with which to pay their indebtedness to said bank, you are hereby authorized to advance such additional sum as may be authorized by O. L. Price, one of the undersigned guarantors, or his nominee, for which purpose, and such advancements, together with interest thereon from the time of the making thereof until repayment, shall constitute additional advancements on the same basis as those made for the payment of the present liabilities of said bank.

We do further advise you that the five day notice in said guaranty required to be given may be waived by Mr. O. L. Price, one of the undersigned guarantors, or his nominee appointed in writing, on behalf of all of the undersigned; that in the event you should inadvertently or otherwise fail to give any notice to which we may be entitled, or fail to comply with

any express or implied condition of said guaranty, that we shall be discharged only to the extent of the loss actually suffered by reason of such violation; and that you shall not be in any manner liable for the shrinkage of any assets or any loss incurred in the liquidation thereof, or for any error of judgment in such liquidation, except for your own negligence.

Very truly yours,

E. S. COLLINS.

C. K. SPAULDING.

C. A. MORDEN,

O. L. PRICE (Trustees),

As Trustees under the

Last Will and Testament

of H. L. Pittock, Dec'd.

O. L. PRICE.

M. SKINNER.

PHIL METSCHAN.

CHAS. H. STEWART.

NATT McDOUGALL.

A. D. CHARLTON."

(R., 206-209.)

"April 12, 1927.

First National Bank of Portland, Oregon, United

States National Bank of Portland, Oregon.

Mr. Mark Skinner,

Portland, Oregon.

Gentlemen:

Heretofore, under date of April 5, 1927, C. A. Morden and O. L. Price, Trustees under the last Will and testament of H. L. Pittock, deceased, and others, who, under date of March 29, 1927, executed and delivered a certain guaranty agreement with

respect to the assets of the Northwestern National Bank of Portland agreed on a method of submitting to the approval of O. L. Price, or his nominee, certain [396—66] matters relating to the liquidation of the assets of said Northwestern National Bank of Portland. In order that there may be a record of the appointment by the undersigned of his nominee to act for him, in pursuance of said document dated April 5, 1927, the undersigned, O. L. Price, does hereby appoint Mark Skinner, of Portland, Oregon, as his 'nominee' and empowers said Skinner to act for him in the performance of all duties, matters and things, which, under said document of April 5, 1927, the undersigned or his nominee is authorized to act.

Yours truly,

O. L. PRICE."

(R., 209, 210.)

And at said meeting of May 3, 1927, the following resolutions with respect to said matters were adopted as in said record stated, as follows, to wit:

"Resolved, that the shareholders hereby ratify, confirm and approve the action of the board of directors, at its said meeting held March 29, 1927, in voting to sell all of its assets to the First National Bank of Portland (Oregon) and The United States National Bank of Portland (Oregon), and in authorizing its president and secretary to enter into the foregoing contract with said The First National Bank and said The United States National Bank of Portland, in the form of said written proposal, accepted, in writing, by said The First National

Bank of Portland and said The United States National Bank of Portland, and in causing all of the assets of this bank to be delivered to said The First National Bank of Portland and said The United States National Bank of Portland, and further approve the execution of said guaranty of March 29, 1927, by said guarantors, said instrument of March 31, 1927, said instrument of April 5, 1927, and said nomination by said O. L. Price of Mark Skinner as his 'nominee' by said instrument of April 12, 1927; Be it Further Resolved that the action of the said board of directors and the said officers in said contract of March 29, 1927, in guaranteeing the assets of said Northwestern National Bank of Portland, meaning thereby to warrant their legal existence, that the same were worth their face value and accrued interest, if any, and in the case of real estate, worth its book value, and the action of the board of directors in maintaining, undisturbed and unimpaired, shareholders' statutory double liability as to all liabilities of this bank unliquidated from said assets, are such and all hereby in all respects ratified, confirmed and approved;

Be it Further Resolved, that the shareholders of this bank recognize that the moneys advanced [397—67] by said The First National Bank of Portland and said The United States National Bank of Portland in the paying of the Liabilities of this bank, as in said contract set forth, are prior in time and prior in right in their repayment from the assets of this bank, from said guaranty and

from the shareholders' statutory double liability, to the payment by this bank to C. A. Morden and O. L. Price, Trustees, of the sum of \$1,000,000 and to M. Skinner, Agent, of the sum of \$1,000,000 which \$2,000,000 represents money advanced by certain of the shareholders of this bank, and is represented by non-negotiable promissory notes, executed by this bank to the said C. A. Morden and O. L. Price, Trustees, and said M. Skinner, Agent, respectively:

Be it Further Resolved, that the board of directors be, and they hereby are, authorized and empowered to pass, from time to time, such further and additional resolutions as may be necessary to carry into full force and effect the said contract between this bank, said The First National Bank of Portland and said The United States National Bank of Portland, and, pursuant thereto, to authorize the officers of this bank to enter into such instruments, in writing, as may be necessary in the premises. The foregoing resolution was adopted by 16,915 votes, representing more than two-thirds of the capital stock of this association, no director, other officer or employee having acted as proxy, with shareholder Cotton, holding 30 shares, and shareholder Griffith, holding 10 shares, voting 'no.'

Thereupon, proxy shareholder Palmer L. Fales moved, shareholder James B. Kerr, seconded, and it was

Resolved that a meeting of the board of directors of this corporation be held upon the adjournment of this shareholders' meeting, and that the board

of directors be instructed to adopt a resolution directing the president of this bank, or any vice-president, or the cashier, or the secretary of the board of directors, to certify to the Comptroller of the Currency the action of this shareholders' meeting in voting to go into liquidation, and to publish notice thereof for the period of two months in a newspaper, published in the City of New York, and also in a newspaper published in the City of Portland, Oregon, which notice, so published, shall apprise the holders of the notes of this corporation, and its other creditors, that this association is closing up its affairs, and that they should present their notes and other claims against the association for payment.

The foregoing resolution was adopted by 16,915 votes, representing more than two-thirds of the capital stock of this association, no director, other officer or employee having acted as proxy, with shareholder Cotton, holding 30 shares, and shareholder Griffith, holding 10 shares, voting 'no.'

(Signed) M. SKINNER,

Secretary.

(Signed) A. L. FRALEY,

Cashier."

(R., 210-212.) [398-68]

The notes to Morden and Price, trustees, in the sum of \$1,000,000 and to Skinner in the sum of \$1,000,000 referred to in the foregoing resolution as aggregating the \$2,000,000 were then produced in open court and identified as so made in the resolutions set forth.



It was then proved in evidence by the witness SKINNER that according to the minutes the October 14, 1924, report of the Examining Committee hereinbefore set forth did not come before the Board of Directors until December 17, 1924.

On March 1, 1927, the resignation of Emery Ohlstead as president and as a director of the Bank was received to take immediate effect and accepted by the Board, and O. L. Price was then nominated for that office and continued to serve until the Bank closed.

The stockholders' meeting of January 11, 1927, at which upon call came up for consideration the entire proceedings of the Board of Directors referred to in the meeting of May 3, 1927, and as taken of the previous meetings in March and April and upon the matters involved herein the evidence shows as follows:

“Thereupon the secretary *pro tem* read in full the minutes of the special meeting of the shareholders held May 3, 1927, and on motion of proxy shareholder, George Black, Jr., seconded by shareholder E. S. Collins, said minutes were approved without any dissenting vote, except that proxy shareholder W. C. Bristol asked that the 250 shares of stock of C. A. Burckhardt for which he is proxy, be recorded as voting ‘no,’ and that the stock standing in the name of Francis P. Graves & Company, 200 shares, represented by W. C. Bristol, proxy, claimed by Mr. Bristol to be owned by Fred A. Ballin, be likewise recorded as voting ‘no,’ and both of said requests are hereby set down

as being made.” (R., 246-247.) [399-69]

The evidence showed that on March 8, 1928, the president reported to the board that the officers of the Davin Michellvi Sheep & Land Company had executed a lease to the Enterprise Livestock Company for a period of three years from March 1, 1928, subject to sale on a rental basis of 15¢ per acre per annum, and the action of the officers in executing this lease was approved upon motion of Mr. Collins, seconded by Mr. Metschan. (R., 248.)

The evidence then further showed through the testimony of the witness SKINNER that the salaries hereinbefore referred to especially had as to himself and other officers received the first increases January 19, 1924, and remained the same as to the other officers than Olmstead up to January 12, 1927, but in the meantime Kanzler was taken on at a salary of \$6,000 a year in 1926 and served until the Bank closed.

It appeared from the evidence that September 11, 1923, the board of directors notified the Comptroller of the Currency that the J. E. Wheeler overdraft for \$3,699.40 and The Telegram Publishing Company \$24,901.94 overdraft and Brown and Wheeler endorsed L. R. Wheeler for \$5,000.00 has been paid, and thereafter sundry and different transactions as shown by the evidence were had, and on the 9th day of October, 1924, at a special meeting of the Executive Committee attended by Price, Spaulding, Metschan, Pittock, Skinner with Price presiding the following motion was passed, and transactions were had and done: [400-70]

“On motion of Mr. Spaulding seconded by Mr. Metschan, the following resolution was adopted:

WHEREAS the action of officers of the bank in approving checks on other banks drawn by J. E. Wheeler against insufficient funds, has created an overdraft on his account in the amount of approximately \$350,000, which amount he is unable at this time to cover in any other way;

BE IT RESOLVED that the officers of the bank be instructed to accept for discount and credit to his account the following notes:

Wheeler Timber Company .....	50,000
McCormick Lbr. Co. ....	100,000
Portland Telegram .....	100,000
J. E. Wheeler .....	100,000

It is understood that Mr. Spaulding, Mr. Metschan, Mr. Charlton and Mr. Pittock, members of the Executive Committee, were entirely without knowledge of the overdrafts mentioned above, and are approving of these loans only for the purpose of covering an existing debt.

On motion of Mr. Meschan, seconded by Mr. Charlton, the officers of the bank were especially instructed not to permit any further overdrafts on the accounts of J. E. Wheeler, or the Portland Telegram.

(Testimony of M. Skinner.)

No other business appearing the meeting adjourned.

O. L. PRICE,  
Chairman.

A. D. CHARLTON.  
PHIL METSCHAN.  
CHAS. K. SPAULDING.  
F. F. PITTOCK.

M. SKINNER,  
Secretary.

(R., 264-265.)

Thereupon the Executive Committee minutes of August 18, 1925, were shown the witness Skinner and he identified the minutes and his signature thereto, whereupon the following proceedings took place:

“Q. Same people present August 18, 1925. You point out to me—Mr. Olmstead appears to have signed that. Is that his signature?

COURT.—You might assume, until something to the contrary appears.

Mr. BRISTOL.—‘On motion of Mr. Spaulding, seconded by Mr. Charlton, a loan of \$150,000 for a period of ninety days was granted to J. E. Wheeler, to be secured by deed to his one-eighth interest in what is known as the Trask Timber Tract, and certificates representing eighty-eight shares of the capital stock of the Silver Fork Lumber Company? [401—71]

“Mr. HAMPSON.—I would like the record to show that Mr. Metschan was not present at that

(Testimony of M. Skinner.)

meeting of the Executive Committee, and also he was not present at the meeting of the board of directors at which the minutes of that Executive Committee meeting were approved.

Mr. BRISTOL.—It is a certainty he was not at that meeting, and if you say he was not at the other, then I will stipulate to that.

Mr. HAMPSON.—All right.

Q. Do you recall the directors' meeting in the other book, of August 18, 1925, when this report came up to them?

A. No, sir, I don't remember. I am sure it was approved, though, at a later date.

Q. You are sure it was approved at a later date?

A. Yes.

Q. Do you know whether Mr. Metschan was present at that later date?

A. I couldn't say without looking it up.

Q. Will you look it up, who all were present, and answer this afternoon? A. Yes.

Q. I don't want to question Mr. Hampson, but whatever it is.

A. The book is right there.

Mr. HAMPSON.—Here it is, page 405 of the minute-book is a record of the meeting of the board of directors, where the Executive Committee report of August 18th, the one just described, was approved, and the minutes show that Mr. Metschan was not present at that meeting of the board of directors.

Mr. BRISTOL.—Well, I will stipulate that.”  
(R., 270–271.)

It then appeared from the evidence that on April 13, 1926, there was an Executive Committee meeting at which Olmstead, Charlton, Metschan, Spaulding and Pittock were present, at which were recited the loans taken by the Bank and the amount of renewals and reductions and these loans were approved but with this limitation,—loans approved by the Committee with the exception that directors Charlton, Metschan and Spaulding withheld approval of accepted drafts drawn by J. E. Wheeler.

It then appeared in evidence that upon May 25, 1926, an Executive Committee meeting was held at which Charlton, Spaulding, Pittock and Skinner [402—72] with others were present, but not Mr. Metschan, the day after the writing of the letter of May 24, 1926, hereinbefore set forth to the Comptroller; at this meeting some thirty-three specific loans and credits by name were considered, specifically enumerated, and the officers were authorized to make advances if required in amounts which shall not exceed in the aggregate the amounts set opposite the names as follows and then were set forth the names, and among them was the Baldwin Sheep Company, Madras, \$125,000.

It then appeared in evidence that on June 8, 1926, improvement of the interior of the Bank premises was considered by contract with A. Guthrie & Company in the amount of some \$165,000 and the work commenced within reasonable time

and went over into the following year, 1927. (R., 278.)

Then follows that on July 13, 1926, on motion of Olmstead, seconded by Charlton, at an Executive Committee meeting the specific item of McCormick Lumber Company in the sum of \$100,000 in the line of credit was revoked, and those who sat upon that meeting in addition to the two mentioned were Metschan, Price, Spaulding, Pittock and Skinner.

Thereupon the witness produced an agreement of guaranty that was referred to in the previous transactions as, of and about March 18th as stated by the witness; the agreement itself being produced by the witness and is as follows:

“THIS AGREEMENT made and entered into on March, 1927, by and between The Northwestern National Bank, of Portland, Oregon, hereinafter referred to as ‘first party’ and the undersigned [403—73] who are shareholders and/or directors of said bank, hereinafter referred to as ‘second party.’

WITNESSETH: That whereas first party has sustained certain losses reported by the Chief National Bank Examiner in an amount in excess of the amount of the present capital stock, surplus and undivided profits, making necessary an assessment on the stock of said first party owned by the respective shareholders thereof, and WHEREAS, the first party, being in an insolvent condition, cannot be permitted to continue to operate until its solvency has been in some manner restored, the first party and second party hereby enter into the following mutual agreement:

1. Cash has been deposited in first party by shareholders signatory hereto as follows:

	Shares Owned.	Amount of Deposit.
F. F. Pittock	175	17,500
Phil Metschan	100	10,000
E. S. Collins	760	76,000
O. L. Price	290	29,000
Estate of H. L. Pittock	7696	769,000
C. K. Spaulding	200	20,000
A. L. Charlton	250	25,000
Kate Hebard	100	10,000

---

**TOTAL CASH DEPOSITED** **\$957,100**

2. Deposits of cash are to be made in first party within thirty days from this date by the following:

M. Skinner	50	5,000
Chas. H. Stewart	65	6,500

3. In addition to the amounts indicated in paragraphs (1) and (2) above, the payment of the amounts named by the persons named in this paragraph (3) will be paid to first party on demand:

Estate of H. L. Pittock	769,600
O. L. Price	36,500
F. F. Pittock	17,500
C. K. Spaulding	5,000
James F. Twohy	10,000
Phil Metschan	10,000
M. Skinner	1,000
Natt McDougall	1,000



E. S. Collins .....	76,000
Chas. H. Stewart .....	1,000
<hr/>	
TOTAL	\$927,600

4. The condition under which deposits referred to in paragraph (1) hereof is that the funds deposited must be used for the payment of an assessment upon the stock of the respective depositors and said deposit cannot be withdrawn for any other purpose until such assessment has been paid in the amount ordered by the Comptroller of the Currency, and the deposits to be made under paragraph (2) hereof shall be subject to the same condition.

5. Deposits to be made under paragraph (2) hereof shall be made on demand, the aggregate, or so much thereof as may be necessary, shall be used for the [404—74] payment of the assessment on stock of shareholders who shall fail or refuse to pay their assessment as required by law, and any stock so purchased shall be held for the account of the persons named in paragraph 3 hereof in the proportion that the amount subscribed by each bears to the total subscription of \$927,600.

6. None of the funds deposited or to be deposited in first party shall be used for any purpose other than for the payment of assessment on stock of said first party and no deposits made or to be made shall be refunded until said assessment has been paid in full following which any deposits remaining shall be returned to the respective depositors.” (R., 28—281.)

(Testimony of M. Skinner.)

Thereupon with respect to the Bank building the witness SKINNER was asked the following questions and made the following answers, and the record shows the following proceeding:

Q. Under what you have as building account. And the total value means the purchase price?

A. Yes.

Q. That is the amount the Bank paid for it?

A. That is according to the resolutions in the minutes \$1,690,000.

Q. And you remember I asked about the charge-off of \$490,000? That is the difference between \$1,200,000 and \$1,690,000.

A. Well, I will explain the transaction if you wish me to.

Q. What I am trying to get at is, so we will understand these items.

A. I will explain them.

Q. The first is the purchase price? A. Yes.

Q. The next is the account of the mortgage?

A. Less mortgage would leave \$890,000; then was an appreciation put upon the books of the value of this property, to bring the net book value of the property to \$1,200,000; therefore there was an appreciation in value over and above the purchase price of \$310,000; that \$310,000 I understand is what you want explained; what was done with it; that is it?

Q. Yes—no; just a minute. Does that give you what you carry on your books? In other words

(Testimony of M. Skinner.)

what you have done here is to arrive at how you are carrying the \$1,200,000? A. Yes, sir.

Q. Then you show on this statement, where you show an appreciation of \$310,000 you satisfied it by debit to "Profit & Loss Account"?

A. Credit to Profit and Loss.

Q. Credit to Profit and Loss account, \$300,206.84 and to adjust miscellaneous items \$9,793.16?

A. That is correct.

Q. Making \$310,000. Is that it?

A. That is right. [405—75]

Q. What I want to know, and what I asked, is this. Are we to understand from this that the way you handled the transaction that building really cost you \$2,000,000?

Mr. HART.—No, Mr. Bristol: Let me explain. They stepped up their figures on the book there, the value of the Bank building on the books, from the original purchase, up \$310,000.

COURT.—To \$2,000,000?

A. Yes, sir.

Mr. HART.—Taking up what they believed to be the appreciation in value of the building.

Mr. BRISTOL.—What I am trying to arrive at is, you mean in this paper that your book account shows that Bank building cost you \$2,000,000?

A. Yes.

Mr. HART.—No, nothing of the sort.

A. Including the mortgage.

Mr. HART.—Doesn't show any such thing. The building didn't cost that. The final figure you

(Testimony of M. Skinner.)

have there is the cost plus appreciation, which is a matter of judgment.

COURT.—Bought the building for \$1,690,000, and then added \$310,000 to that for appreciation?

A. That makes \$2,000,000; but it was carried on the books at \$2,000,000 less the mortgage.

Mr. HAMPSON.—The books don't show they paid \$2,000,000 for it.

Mr. BRISTOL.—That is what I asked you.

Mr. MAGUIRE.—Your question was whether he carried that on the books as part of the cost of the building.

Q. Now, having regard to His Honor's question, what you mean by this paper as showing the exact condition—I am not talking about what you mention as a few dollars—you take this amount that you appreciate, and you make a credit, you say. That is what you said, when I said debit—you made a credit to Profit and Loss of \$300,206.84 and you also made a credit to adjust Miscellaneous Items, whatever that is, for \$9,793.18, showing how the \$310,000 appreciation was taken up?

A. Yes.

Q. Now I say again, that on the books of your Bank your building at that transaction as shown, having relation to the board of directors meeting that I asked you about is that the cost of the building to the Bank was \$2,000,000.

Mr. HART.—What is the use of stating it that way. The cost was not that.

COURT.—It looks from what I can gather that

(Testimony of M. Skinner.)

they simply swelled the assets \$310,000, and in order to get the \$310,000 into Profit and Loss—book-keeping.

A. That is correct.

Mr. HART.—This building had become worth that and more than that.

COURT.—According to their estimate, yes.

Mr. HART.—The building later sold for more than that, if your Honor please.

COURT.—In other words bought the building for \$1,690,000 and considered it worth \$2,000,000?

A. Yes, that is correct. [406—76]

Mr. HART.—After its value increased, yes. That gave them three hundred thousand surplus, which they used in charging as a credit to Profit and Loss.

COURT.—That is more bookkeeping.

Mr. HART.—That is all.

Q. Is that an Executive Committee meeting which was on your book now, February 24, 1925?

A. Yes, sir.

Q. Now it says in here that Mr. Olmstead said that they had consummated the purchase of the bank building at a cost of \$1,690,000, and that the property would be carried on the books at \$1,200,000 and the payment of a mortgage of \$800,000 assumed.

A. That makes your two million.

Q. Now I ask you if the difference between the \$1,200,000 the purchase price of the building, and the \$1,690,000—that is what I asked you about—is

(Testimony of M. Skinner.)

\$490,000, and that is the paper you bring in to satisfy that question?

A. Yes, sir.” (R., 282-286.)

Thereupon complainants' complaints (Exhibit 1) was offered in evidence.

Thereupon the original examiner's report of June 24, 1924, was shown the witness SKINNER and as produced by him known as the "Otto report" and the matters heretofore set forth in the proceedings of 1924 were therefore specifically enumerated and specially referred to as of the date of June 14, 1924, and *thwew* was then overdue paper of \$362,882.62 and Bad Debts of \$1,116,481.44; and Other Overdue paper of \$620,447.27, and the total footing as of June 14, 1924, was \$1,736,928.66.

Thereupon Mr. Hart as Chief Counsel called attention to the application of Section 5204 of the Revised Statutes; then Mr. Logan, attorney for Mr. Morden stated that the same rule applied in the state as in the United States, and the following took place: [407-77]

“Mr. BRISTOL.—All I want to say about that is that the officers have this information right under their noses and as your Honor has already announced in the criminal case, and I have heard you do it, people don't have to go into this business if they don't want to, and when they go in they go in with knowledge of what they have to do.

Q. Now, as quickly as we can, I would like you to answer me this please. Did you find in that report, under the same heading of Overdue Paper, Statu-

(Testimony of M. Skinner.)

tory Bad Debts and Other Overdue Paper, in accordance with Section 5204 of the Revised Statutes of the United States, which is printed on here, O. Anderson, for instance, and others; you may look through yourself; they are listed in the complainants' complaint, and to which Mr. Hart referred, as early as June 14, 1924.

Mr. HART.—You say were they in there as early as that. Indeed they were, much earlier, some of them.

Mr. BRISTOL.—All right; that answers the question.

Q. Now, were they still being administered upon by your bank and checked by you June 14, 1924, in accordance with his pointing out—meaning Otto—pointing out to you directions in regard to some?

Mr. HART.—The records speak for themselves in regard to that.

Mr. BRISTOL.—I asked if he knew about it as an officer.

Mr. HART.—I don't think you can ask him to give you what the records show over a period of years.

Mr. BRISTOL.—Are those things listed in complainants' complaint, referred to by you in this report as criticisms of bad paper as of that date?

Mr. HART.—Undoubtedly some of them may be, those that have not been charged off on which losses may have been ascertained.

Mr. BRISTOL.—With reference to your own statement to the Court, you told the Court there was

(Testimony of M. Skinner.)

active administration upon these, and that plaintiffs' statement had been grossly exaggerated, and that there were no such losses as claimed.

Q. Have you found any at all, did you find any?

A. Some of these collections are listed there.

Q. In order to be specific, I call your attention to A. O. Anderson. Doesn't that state that A. O. Anderson in a certain amount is slow, and if so read the amount it states at that time.

A. List A. O. Anderson & Company loans in the amount of \$91,330.40 on that date, of which he estimates 60% to be doubtful, and \$31,330.40 to be lost.

Q. June 14, 1924?

A. That was his estimate, yes. I notice, however, that there was \$19,800 paid on it very shortly afterward.

Q. What is not his writing, that is somebody else's. A. That is ours.

Q. I will get to that after a time. Here is A. Rupert for instance.

A. Under this particular heading they list A. Rupert & Company Inc. loans amounting to \$25,747.93, listing the same amount as slow. [408—78]

Q. That is of date June 14th? A. Yes.

Q. Do you find any reference to D. M. Stewart?

A. He lists D. M. Stewart loan of that date \$44,221.20, and the same amount as slow.

Q. Now did you bring the one of 1925, the first one? A. February 2, 1925.

Q. Before we come to that, I call your attention to this again. Now, he divides his report appar-



(Testimony of M. Skinner.)

ently into large line—you note I call your attention to that? A. Yes.

Q. Under large lines you find Bankers Discount and Oregon Agricultural, B. F. Wilson and M. F. Jones, do you? A. Yes.

Q. And those marks that are on here are checkings and workings of the people in the bank?

A. Yes.

Q. And the original figures of these large lines at that time and his criticisms of it, total how much?

A. \$770,112.14.

Q. Now in that very thing you find also, don't you, Dudur Farm & Fruit Company, and the amount of that is how much?

A. \$524,746.97, including bonds, securities and notes.

Q. Now, I call your attention to the same June 14, 1924, report still under the heading of Large Lines, and ask if you find there set forth before you matter in addition to that which was by your Board recorded, having regard to this report being read, concerning J. E. Wheeler and the 'Telegram,' and matters otherwise alleged in the complainants' complaint, that you heard Mr. Hart speak about to the Court, and items we have been pursuing here?

A. I find reference to—did you mention any name?

Q. Wheeler and 'The Telegram' and the rest of them.

A. I find mention of their obligations here.

Q. And this matter that he has on—

(Testimony of M. Skinner.)

A. Page six, insert 5.

Q. Page six, insert 5, commences with the words, "Entire Line."

A. This has reference to that up there.

Q. All right. Then that means the list?

A. Yes, as having to do with this paragraph.

Q. You understand the matter I am showing, which is to shorten up and connect the items already given to the Court out of your big book, \$584,500 referred to in that letter? A. Yes, sir.

Q. Now, these items as he shows them, and that are on the books, are covered by these comments, are they not, as I show you? A. Yes.

Q. And J. E. Wheeler appears there, \$86,000?

A. Yes.

Q. And the Wheeler Timber Co. appears there as \$90,000? A. Yes.

Q. And under L. R., brother of J. E. Wheeler, as that reads, appears \$106,500? [409—79]

A. Yes, sir.

Q. And the W. G. Wheeler Estate, J. E. Wheeler, executor, appears as \$95,500? A. Yes, sir.

Q. Telegram Publishing Company, J. R. and L. R. Wheeler \$120,000? A. Yes, sir.

Q. McCormick Lumber Company, managed by J. E. Wheeler \$86,500? A. That is correct.

Q. Then he brings his total out.

A. \$584,500.

Q. Then he follows with this writing, does he not?

A. He does.

Q. 'Line reduced about \$60,000 since last ex-

(Testimony of M. Skinner.)

amination. J. E. Wheeler's statement shows net worth \$4,515,000 consisting largely of timber holdings. L. R. Wheeler shows net worth \$1,660,000 consisting mostly of timber holdings. Bank officials state Wheelers have a deal pending covering sale of 50,000 acres of timber on Rogue River, in Oregon and expect to get about \$3,500,000 for it. Are considering purchase by one of the largest lumber manufacturers in the United States. If deal goes through it is said entire line will be liquidated. McCormick Lumber Company makes a statement showing net worth of \$1,047,000 consisting largely of plant and timber. Wheeler Brothers own the Telegram, a local evening newspaper company, statement shows net worth \$671,000 mostly franchise and fixed assets; not making any money. The above line is safe, but has become quite permanent, and should be liquidated.' Is that correct?

A. That is what it says there." (R., 292-297.)

Thereupon the report of the Examiner February 2, 1925, was shown the witness and the following questions and answers were given:

"Q. Now, will you please state to me what that Examiner's report of the condition as of February 2, 1925, referred to in the record I read before, showed to be the Capital, Surplus and Undivided Profits, on the date of February 2, 1925?

A. \$2,461,420.36.

Q. That includes Capital, Surplus and Undivided Profits?

(Testimony of M. Skinner.)

A. Yes, that is net undivided profits after the expenses are taken out.

Q. Now, will you look and tell me please, on that report, having reference to the same item Mr. Hart spoke about, Statutory Bad Debts and Overdue Paper, what he lists there as your total of that date?

A. Total Bad Debts as defined by the Section amounted to \$780,465.27. That is what you mean, did you?

Q. I asked for total Overdue Paper, including Bad Debts.

A. All right, I will change that. \$1,207,668.47.

Q. And at this date we find A. O. Anderson here listed as a loss for the same amount, don't we?

A. We do. This is estimated.

Q. We find Glenn Miller listed also as a loss, don't we?

A. To the extent of \$9,000.00. [410—80]

Q. And we find A. Rupert, as far as that June 14, 1924, report is concerned, the only difference and change at all is that he has—the amount is the same, and he carries it over into the doubtful column, does he not?

A. He carries a portion of it into the doubtful column; \$23,173.93 in the doubtful column; slow \$2,574.00.

Q. At that time he also—does the report refer to the Bankers Discount Corporation?

A. Under another heading, yes; Slow and Doubtful Paper.

(Testimony of M. Skinner.)

Q. And losses on current Loans? A. It does.

Q. And also refers to the Dufur Farm & Fruit Company, and indicates what?

A. Lists the amount as \$137,317.52, which he estimates as lost.

Q. Just state whether that report shows as of that date, to wit, February 2, 1925, that the Wheeler items as appeared on the June 14, 1924 report, were again called to the attention of your bank?

A. They were.

Q. And again upon what you call Insert 1-B, page 6. A. Large Lines.

Q. Itemized amounts of the Wheeler paper, Telegram Publishing Company, are set out again, are they not?

A. Same paper. In other words, he refers to the same notes, under different headings, in every report, in some instances.

Q. Well, with respect to that now; whether they are under the same headings in different reports, or not. Tell me please, whether on February 2d he made any comments which went to your Board concerning this what you call, I suppose Large Wheeler Line. Is that what you mean?

A. That is what he calls them, Large Lines.

Q. So we don't misunderstand each other, they are Wheeler, J. E. and the Wheeler Timber Company, and L. R. Wheeler, W. G. Wheeler Estate, the Telegram Publishing Company, and the McCormick Lumber Company. They are all mentioned?

A. Yes.

(Testimony of M. Skinner.)

Q. And this matter that is here shown on the report; is as follows, is it not? 'All above list slow and current loan; no change in their line except Wheeler Timber Company has been increased \$7,500, J. E. Wheeler's statement under date January 1, 1923, shows net worth \$4,515,000, consisting almost entirely of equities and stocks in timber holdings companies belonging to Wheeler family and estate. No statement filed for Wheeler Timber Company, J. E. and L. R. Wheeler own the Telegram Publishing Company, which publishes a daily newspaper in Portland. It is claimed the Hearsts have offered one million for the paper. Refused to sell. Statement of Publishing Company shows net worth of \$671,000. McCormick Lumber Company makes statement showing net worth of \$1,886,565 consisting largely of timber holdings. Payment of the above line depends upon sale of some timber holdings of the Wheeler family and Estate. [411—81] A written statement of holdings shows that the family and estate own and control over two hundred thousand acres of timber approximating fifteen billion feet, besides other eastern holdings. J. E. Wheeler shows his personal interest as \$5,450,000. Liquidation of this line should be insisted upon. Capital in character and fixed.'

Q. Is that right?

A. That is part of it." (R., 297—300.)

Thereupon the witness produced the Wyld report of March 25, 1926, and identified the same, and he was asked what it showed about the Wheeler Mc-

(Testimony of M. Skinner.)

Cormick Line and he said that under the heading of Large Lines that was shown and that the report disclosed a complete history as of the date shown by the report as follows:

“J. E. Wheeler, direct loans.....	236,000.00
J. E. Wheeler (sundry drafts in bills in transit) discounted .....	99,100.00
McCormick Lumber Company (protested checks in cash items).....	36,503.50
Wheeler-Olmstead Company (protested checks in cash items) .....	11,000.00
Wheeler Timber Company .....	97,500.00
W. E. Wheeler Estate .....	95,500.00
Telegram Publishing Company.....	120,000.00
Overdraft .....	261.78
. R. Wheeler .....	106,500.00
	<hr/>
	\$802,365.28

Loans to J. E. Wheeler unchanged since previous examination, again classified as Slow.

Sundry Drafts in transit, discounted by J. E. Wheeler, are drawn by J. E. Wheeler on W. M. Wheeler, of San Francisco, the Wheeler Timber Company of San Francisco, and William Smearbaugh, of Pennsylvania, while not classified in this report, are carried in an account “Bills in Transit” and should be carried in Loans and Discounts. One draft for \$21,900, drawn on W. M. Wheeler is a renewal.

The McCormick Lumber Company protested checks and the Wheeler-Olmstead Company pro-

tested checks, both carried as Cash Items, were eliminated during the examination, having been taken up by J. E. Wheeler and the McCormick Lumber Company. The original checks were payable to and credited to the account of J. E. Wheeler, and at this examination [412—82] classed as an excess loan, with the direct liability of J. E. Wheeler. (See Excess Loan Schedule.)

Loans to the Wheeler Timber Company, the W. E. Wheeler Estate, and the Telegram Publishing Company, all secured with a guaranty of J. E. Wheeler, are unchanged since the previous examination, and all classified Slow in this report.

Loans to L. R. Wheeler, who also guaranteed the loan to the Telegram Publishing Company, are unchanged since the previous examination, and again classified slow.

The only change in the entire line since the previous examination is the elimination of the McCormick Lumber Company's indebtedness of \$86,500, which was paid through proceeds of a bond issue, and the addition to the line of the discounts and cash items listed above.

At the previous examination J. E. Wheeler made an assignment to the Portland Trust Company, as trustee, of his one-eighth interest in timber lands situated in Tillamook County, and one-sixteenth interest in timber lands situated in Yamhill County; also the following stock to secure his entire direct and indirect indebtedness to this Bank.

88 shares of Silver Fork Lumber Company

40 shares of W. H. Peters Logging Company



43 shares of McCormick Lumber Company

255 shares of Browns-Wheeler Company

380 shares of W. E. Wheeler Company

This collateral was also pledged as a secondary lien to an indebtedness owing a Bank in San Francisco, where it is said the agreement had been forwarded but not returned. President Ohnstead gives assurance that Wheeler has arranged his affairs so that a material reduction will be obtained on this line within the near future, either through sale of some of Wheeler's holdings, or a bond issue against the same." (R., 302-304.)

That this report also referred to the Michellvi Sheep Company, and the witness showed that there was listed on that account \$350,212.06, including overdraft and investment in stocks and bonds in behalf of the Bank, and that as of March 25, 1926, with respect to Dufur Fruit & Farm Company \$295,565.68.

Thereupon the witness produced the report of the Bank Examiner T. E. Harris of September 21, 1926, and therefrom informed the Court that the total amount of assets scheduled for examination and considered nonbankable was \$2,621,240.05, and that the amount then doubtful was \$490,468.74; that the amount of [413-83] Slow was \$809,747.25; and the witness was then asked if this report showed anything about the Michellvi Sheep Company and the Dufur Farm & Orchards, and the witness then read from the report as made to the Bank and communicated to the directors the following information as then given in evidence:

(Testimony of M. Skinner.)

“A. September 21, 1926, Item 7: Under ‘Criticism.’ Lenient credit policies which have not only resulted in heavy losses but have carried this institution entirely beyond its legitimate field of banking and made it a partner and in some instances sole owner of other business which it now directly or indirectly operates. I may refer to, (a) Bi-State Investment Company, \$501,985.55; (b) Dufur Farm and Fruit Co., approximately \$300,000; (c) Davin Michellod Sheep & Land Co., \$321,150.00; (d) two-thirds interest in Boulder Creek Lumber Company, \$77,490. (in addition to a small loan); (e) M. L. Jones-Oregon Agricultural Co. lines \$244,681.63; (f) Kelly Ranch Line approximately \$190,000. The foregoing items aggregate more than \$1,500,000, and are investments which your examiner considers as entirely outside the purpose for which banks are chartered.” (R., 306.)

Thereupon the witness identified the report made by T. E. Harris of March 5, 1927, and said that on page 7 of that report Harris made a recapitulation of the Losses, Slow and Doubtful Paper, and the witness was asked to tell what was shown as the then condition of the Bank under that report and he answered as follows:

“A. Under recapitulation, total Slow \$2,473,948.89; Doubtful \$347,025.39; Estimated Losses \$2,446,569.19; Appreciation under head of Bonds, Securities, etc. \$25,647.86.

(Testimony of M. Skinner.)

Q. This is the report that is in this other book as of date March 5, 1927, before the Board?

A. That is referred to; letter of March 18th.

Q. Now this being 1927, I call your attention to Davin Michellvi Sheep Company as to the amount then carried in the books at the date of this report, March 5, 1927, if he showed anything?

A. He did.

Q. What did he say it was, the amount carried on the books? [414—84] A. \$273,259.97.

Q. Now we go to the McCormick Lumber Company. What did he say, if anything, of the McCormick Lumber Company and J. E. Wheeler?

A. The same heading, please?

Q. That is, the amount carried on the books.

A. It is under the heading of Bonds, Securities, etc., Claims Account; this is a subdivision Claims Account, under the general heading Bonds, Securities, etc.

Q. All right, all right, I asked you if he stated what the total amount of the McCormick Lumber Company and J. E. Wheeler was.

A. Yes, sir. McCormick Lumber Company and J. E. Wheeler, \$796,762.00.

Q. What does he say about that?

A. \$791,662 loss estimated on the Wheeler Line. Other Large Lines have comment on this item.

Q. Now, I call your attention to whether or not under Excess Loans he has listed anything that we have been talking about concerning the Dufur Fruit & Farm or the Davin Michellvi Sheep Com-

(Testimony of M. Skinner.)

pany, and the Wheeler line. If he does, tell me what the report shows.

A. The total Wheeler lines, Excess Loans he heads this, and Total Wheeler Lines; Total Wheeler lines is \$1,126,662, covering checks of the McCormick Lumber Company and drafts on the Wheeler Timber Company referred to just above this, of \$796,762.

Q. Seven nine one?

A. Seven nine one, he has it here, less five items believed to be loss estimated \$791,662. That is the amount of these checks.

Q. Well, go ahead, what does the report show?

A. 'The following items are not classified as excessive loans but they are noted here for future reference. The exigencies of this examination are such that I have not had the opportunity to trace the origin of these items so as to determine whether they are in violation of Section 5200, U. S. R. R. Dufur Fruit & Farm Company (Bonds) 267,000 Loss now estimated of \$179,500 and previous losses have been taken. The Item in loans is a receiver's certificate, not subject to the limit.

Davin Michellod Sheep &

Land Co.	Stock	\$273,259.97
do	Loans	36,088.65

---

309,348.62

\$173,259.97 loss estimated.

Bi-State Investment Company

503,883.19

(Testimony of M. Skinner.)

\$250,000 loss estimated.

Oregon Agricultural Co.—Claims 256,068.90''

(R. 307-309.) [415—85]

The witness was then asked about the Examining Committee's reports and he testified that between the 18th of May, 1926, and the 7th day of December, 1926, there was not Examining Committee report but that the December 7, 1926, report was begun on November 19, 1926, and the report was finally completed as of December 7, 1926, and that there was no report of the Committee in November, 1926.

Thereupon this witness on cross-examination showed that at the stockholders' meeting of January 11, 1927, Charles Burekhardt, complainant, was represented at that meeting by Lawrence McNary and that at that meeting there was a resolution adopted with reference to the approval or — of the acts of the directors for the preceding year, and that resolution was adopted unanimously without any dissenting vote, and in the meeting of January, 1926, Burekhardt was represented by J. N. Casey; and at that meeting for the acts of the directors during the year 1925 there was a resolution ratifying and confirming such acts, and that in January, 1925, Burekhardt was present by a proxy, Dean Vincent by name, who voted all the stock; that for the year 1924 he did not find either the name of Ballin or Burekhardt but in 1923 Burekhardt was represented by DeGraff, and in 1923 Burekhardt was represented by proxy Dean

(Testimony of M. Skinner.)

Vincent of the Portland Trust Company, of which DeGraff, the former proxy was also a member. In January, 1927, the Ballin stock was voted in the name of Francis Graves by George Black, Jr., and according to the witness confirming the [416—86] acts of the directors; that in the meeting of May 3, 1927, Palmer Fales voted the Graves stock as proxy. At the meetings of the stockholders in January, 1928, there was a proxy accompanied by the letter of Fred A. Ballin that was the same stock originally issued to Ballin and was standing in Ballin's name at the time of the meeting, and when he was asked as to whether Ballin ceased to be a stockholder of the Bank he said he did not think any record of that was available; and the witness testified, however, that the Ballin stock was transferred to Graves October 18, 1926.

The witness then testified that a resolution was passed October 9, 1924, for the purpose of covering or taking care of indebtedness created by Wheeler's checks returned drawn on Eastern and outside banks and returned unpaid, and that on that day the officers were informed that some of these checks had been returned in a substantial amount and Wheeler came into the Bank and said that certain credits which he had forwarded to banks and on which he had drawn these checks and which he expected to receive credit for had not been given and, therefore, the checks had been refused, and he said this to the witness Skinner and Chas. H. Stewart, but the witness thought Mr. Olmstead

(Testimony of M. Skinner.)

was out of the city and the witness asked Wheeler to cover the checks and take them up and Wheeler mentioned of his own accord that there was probably some others that would come back and he might need additional funds and he wanted an additional loan as a temporary advance, and I told him that I would [417—87] have to go before the board of directors, and he asked me to refer the matter to the Committee to loan the Wheeler Timber Company \$50,000, McCormick Lumber Company \$100,000, Portland Telegram \$100,000 and J. E. Wheeler \$100,000. The matter was submitted to the Executive Committee in October 1924, and authorization was given; the witness added that the resolution stated that three or four of the directors stated they did not know about this overdraft, and the witness then stated they did not know until the checks came back \$250,000 of the allotment was borrowed. The Telegram paid back its \$100,000 and a little while thereafter McCormick Lumber Company paid back its \$100,000, and the Wheeler Timber Company was paid down to \$75,000.

Thereupon counsel for defendant wanted to show there was nothing improper in stepping up the Bank Building on the books of the Bank, and he was allowed to show that the sale price was \$2,200,000, and the witness so testified.

Thereupon with reference to the Examiner's report hereinbefore referred to this witness on cross-examination testified as follows:

“Q. Your attention was drawn to a number of

(Testimony of M. Skinner.)

reports of Examiners 1924, 1925, 1926 and 1927. Will you state whether or not the examination made by the Federal Examiner in September, 1926, was a regular examination, regular periodical examination, or whether it was a special examination, and if a special examination, state what the occasion for it was.

A. That examination was made at our request, or upon an agreement with the Comptroller of the Currency. We had Mr. Harris himself then Chief Examiner, examine the bank prior to the time that we would put into effect [418—88] organization of a company, as I recall it, outside company.

Q. That is the Directors asked the Comptroller of the Currency to have the Chief Examiner, Mr. Harris? A. Yes.

Q. Make the yearly examination? A. Yes.

Q. And developed the fullest extent to which it would be desirable to charge off everything in order that the organization of a liquidating company, and the transfer of the assets to it, might enable the bank to resume the payment of dividends?

A. That is correct.

Q. And you know, don't you, that the plan which was under consideration involved the taking out of \$1,500,000 of assets? A. It did.

Q. Now, reference was made also to an examination and report of an examination of the bank of March 5, 1927? A. Yes.

Q. State whether or not that was a regular



(Testimony of M. Skinner.)

periodical examination, or whether that was a special examination?

A. It was a special examination made at our request.

Q. By whom?

A. T. E. Harris, Chief Examiner.

Q. What was the occasion or purpose for that examination?

A. To establish a basis for 100% assessment on the stock.

Q. That was after the so-called float had been discovered, was it not? A. Yes.

Q. And is it a fact that at that time the Directors had determined upon a 100% assessment?

A. They had.

Q. And is it a fact that they had determined to make that assessment an involuntary one if it couldn't be made voluntarily? A. Yes.

Q. And is it a fact that this examination was requested so that a basis for an involuntary assessment might be secured? A. Yes.

Q. And what did that mean, in the way of taking out assets? What did it call upon the Chief Examiner to do?

A. It became necessary for him to list as non-bankable doubtful paper, or losses, an amount of the bank's assets which would justify a 100% assessment.

Q. Do you know whether that subject was discussed between Mr. Harris and the officers of the bank? A. It certainly was.

(Testimony of M. Skinner.)

Q. During the examination? A. Yes.

Q. Do you know whether Mr. Harris had any difficulty in finding enough assets which he could justifiably eliminate to bring the total up so he might be able to make 100% assessment necessary?  
[419—89]

A. My recollection is he had some difficulty in finding the amount." (R. 329—331.)

And thereupon on redirect examination this witness testified as follows:

"Q. That report of June 14, 1924, that you produced was that a special or regular report?

A. As far as I know that was a regular call.

Q. What was that?

A. I think it was a regular examination.

Q. Now, what was the next one, in February, 1925. A. February 2d.

Q. Was that a regular examination, or a special examination?

A. I would call that a regular examination.

Q. Same as of June 14, 1924? A. Yes.

Q. Now, your first one in 1926; what date is that?

A. March 25th.

Q. What you called the Wylde report, isn't it?

A. Yes.

Q. What was that, regular or special?

A. Regular.

Q. Now, you do say, however, that the report of September, 1926, was made at the request of the representatives of the bank? A. What date?

Q. September 19, 1925. A. Yes, sir.

(Testimony of M. Skinner.)

Q. You do say that was made at special request?

A. Yes, sir.

Q. Of the representatives of the bank?

A. That is my understanding.

Q. And you do say that the report of March 5, 1927, was made at the special request of the officers of the bank?      A. Yes, sir.

Q. And you say the purpose of the 19th of September report was to set a basis for the new take-over company?

A. That had been the understanding with the Comptroller at the meeting—

Q. What?

A. That was in accordance with the understanding with the Comptroller.

Q. I didn't ask anything about any understanding with the Comptroller. I asked if you didn't say the September 19th examination was a requested examination, for the purpose of setting a basis for a new take-over company; isn't that what you said?      A. Yes, sir.

A. And I asked you as to the March 5, 1927; you say that was to establish a 100% voluntary assessment?

COURT.—Involuntary.

Mr. HART.—Involuntary.

Q. Wait a minute; I want to find out whether you didn't propose a voluntary or involuntary; let's get it; what did you say, sir, again? [420—90] Did you say that was to establish a 100% volun-

(Testimony of M. Skinner.)

tary assessment or was the basis for a 100% involuntary assessment?

A. It would be for the purpose of establishing an involuntary assessment couldn't be arranged.

Q. So that when Mr. Hart spoke about a voluntary assessment to you and you answered, you knew as a banker that a voluntary assessment without unanimous consent couldn't be made, didn't you?

Mr. HART.—My question was perfectly clear, and the answer was clear.

Mr. BRISTOL.—It may be so, but this is redirect examination. You told me I would have to find out if I didn't like the way you asked the questions.

Mr. HART.—You musn't misquote me, Mr. Bristol.

Mr. BRISTOL.—I am not.

COURT.—Perfectly clear; I think I understand the question.

Q. Will you be kind enough to indulge me with the same particularity you indulge the other counsel, to look at that meeting of the 3d of May again; and when I asked you to read in the record the other matter in regard to the famous proxy, you were about to do so, and also the one of January 10, 1928, when counsel stopped you. Now, take page 477 and look if you please at the proxy that accompanies Ballin's stock, that I personally handed you myself, and all the accompanying papers with regard thereto, if you have them in that record.

(Testimony of M. Skinner.)

A. I have attached to the record here a letter signed by Fred A. Ballin, of date December 14, 1927, addressed to Francis P. Graves & Company, No. 600 California Bank Building, Los Angeles, California.

Q. This, so the Court understands, is attached to this you told Mr. Hart was the various proxies, isn't it? A. Yes, sir.

Q. Now read it in so the Court can get an understanding of it.

A. 'Gentlemen, in connection with the 200 shares of the capital stock of the Northwestern National Bank of Portland, Oregon, that you are holding in your name on the books of the corporation, but which belongs to me, and is being held by you for my benefit, I hereby authorize you to execute a proxy appointing William C. Bristol as your proxy to vote said stock at the annual meeting of the shareholders of said banking corporation to be held January 10, 1928, in Portland, Oregon. Very truly yours, signed Fred A. Ballin.' This is attached to proxy—

Q. That paper is attached to proxy you read to Mr. Hart, isn't it? A. Yes, sir.

Q. And that is the issued—it is witnessed, is it?

A. It is witnessed.

Q. And it was pursuant to that particular paper that you and Mr. George Black of Platt, Fales & Smith's office, checked up the allowance of the proxies, etc., for the meeting, didn't you?

A. Yes, sir.

(Testimony of M. Skinner.)

Q. And you had that in hand before we went into the meeting, didn't you?     A. Yes, sir.

Q. And you also as secretary recorded the vote "no" that I entered there for both Ballin and Burckhardt, didn't you?

A. I did." (R., 331-335.) [421-91]

#### TESTIMONY OF L. B. MENEFEE, FOR COMPLAINANTS.

There was evidenced from the witness L. B. MENEFEE that he sold his stock the 10th day of March, 1923, consisting of 4,200 shares, being his own and that of Mr. Standifer and Mr. Jones, to Mr. Olmstead, which included the stock he first acquired when the bank started as well as stock that came to him upon the increase of the capital stock of January, 1922, and which Olmstead told him he would take off his hands; that his successor director was nominated on September 25, 1923, and was E. S. Collins; that he and Mr. Price talked over the sale of the Bank sometime in February, 1923, with J. C. Ainsworth in Mr. Ainsworth's office in the United States National Bank in Portland, Oregon. That he did not remember anything about the details at all, and when pressed for details about his recollection his habitual answer was that he didn't remember. Whereupon, the Court enquired whether or not there was anyone in the courtroom who was able to tell of his appointment as a member

(Testimony of L. B. Menefee.)

of the Examining Committee of the Bank, and the following statement was made in the record:

“Mr. HART.—Yes, I can state it from the record. Mr. Menefee was appointed as a member of the Examining Committee in January, 1923, but before that Examining Committee undertook any examination Mr. Menefee had sold his stock, and someone was put in his place. Now his position as director was not filled until September, but of course he didn't act either as a director, or as a member of the examining committee, after he disqualified himself by selling his stock.

Mr. BRISTOL.—Well, then it is in the record that he did act as a member of the Examining Committee.

COURT.—He was appointed as a member of the Examining Committee.

Mr. BRISTOL.—Was appointed a member, and acted as such up to the time that he sold his stock. [422—92]

“Mr. HART.—No, that is not my admission. The Examining Committee made one or more examinations each year; the first examination had not been made when Mr. Menefee sold his stock.” (R., 346.)

The attention of the witness was called to page 21 of the book record of May 22, 1923, wherein it was recited that the Chairman appointed Mr. Spalding to act as a director for the coming year in place of Mr. Menefee. Upon the witness being pressed for his recollection, the Court remarked:

(Testimony of L. B. Menefee.)

“COURT.—You don’t expect a business man to remember every incident that occurred in the transaction of business of that kind back as far as 1923?  
\* \* \* (R., 346–47.)

Mr. BRISTOL.—Well, it would seem to me that in a matter of so much importance as a \$600,000 investment, that I would have some recollection.  
\* \* \* ”

Thereupon the witness was asked:

“Q. Who was it that was on that board, in accordance with the by-laws, to which I called your attention, and the executive committee by-laws as well, that were the active, managing directors of that bank while you were there?

A. Well, I think Mr. Olmstead was the active member of the bank.

Q. How is that?

A. Mr. Olmstead.

Q. Was the active, managing director? Mr. Olmstead was the president, wasn’t he?

A. Yes, he was president.

Q. Who were the directors that were the active ones in the bank at the time you were there, up to the time you say you sold your stock in 1923?

A. Well, Mr. Price, Mr. Metschan, and all the directors. Mr. Spalding. I have forgotten; I have really forgotten what directors. Mr. Charlton and Mr. Pittock.” (R., 348–349.)

The Court then asked:

“COURT.—Did you talk with Mr. Spalding about it?



(Testimony of L. B. Menefee.)

Q. Do you recall whether or not prior to March 10, 1923, and between the annual stockholders' meeting on that date, when you say you sold your stock—do you recall whether you also discussed the condition of the bank with Mr. Spalding? [423—93]

A. I don't recall any time that I talked with Mr. Spalding. I am sure I did, though; that I discussed it with Mr. Spalding. We stood in the bank there and discussed it a great deal, at different times.

Q. How about Mr. Charlton?

A. Well, I probably talked with Mr. Charlton.”  
(R., 350—351.)

Thereupon the witness testified that prior to the time he sold his stock, in March, 1923, he did not think anybody had called his attention to any condition in the bank; that he did not remember whether or not he saw the reports in the year 1922. He did not remember whether he saw the reports of September, 1922, or not.

Upon cross-examination this witness testified as follows:

Q. “Mr. Menefee, you have not disclosed to any of the attorneys for the defense in this case, that you had been subpoenaed, did you?”

A. No, I think not.

Q. You haven't talked over with any of us what testimony you might be called to give in the case?

A. No, sir.

Q. You sold your stock in March, 1923, but evidently your place as director was not filled until

(Testimony of L. B. Menefee.)

September, 1923. Now, you didn't act as director after you sold your stock did you? A. No.

Q. You say that the affairs of the bank—you did discuss the affairs of the bank with all the directors when you were on the Board. It is true, is it not, that all of them who were directors functioned as such while you were on the Board, that is, they attended meetings? A. Yes, sir.

Q. Took part in the affairs of the bank, did they?

A. Yes, I think so. [424—94]

Q. Is it true, also, that as far as you could observe, these different directors all interested themselves in the management of the bank, and exercised their best judgment on the questions put before them at the meetings, and at other times?

A. I think so." (R., 354—355.)

On redirect examination, this witness testified that he knew or thought he knew that there were a lot of bad loans in the Bank, or some doubtful loans, but did not know how bad they were, but that he did not look into them to see how bad they were, as any officer of a Bank might have done, and that he did not know of any director who looked into them to see about their badness or goodness, and that he could not name any director who did so.

The witness was then especially interrogated about some of the specific charges in the complaint, and answered that he knew nothing about them. He was then interrogated about the Baldwin Sheep Company, and said that he knew something about

(Testimony of L. B. Menefee.)

that company; that it was a company in Eastern Oregon in which he was interested, and had some stock in it; that Mr. Pittock was the principal owner, and that this concern owed the Bank some stock at the time he got out; that he knew as early as 1921 that there were transactions with the Evening Telegram and J. E. Wheeler, and that they were borrowers from the Bank, but that he thought the Wheeler loans were absolutely good, up to the time he left the bank; that he thought there were some small doubtful loans at the Bank, but didn't know just which ones they were, and that there were some loans at the Bank that he did not approve; that he did not discuss the good or bad loans with the other directors, and [425—95] that the directors from time to time passed on a good many loans; that there were no loans made in the Bank from March, 1912, down to March 10, 1923, the time he sold his stock, but that the directors approved them all; that Mr. Metchan and Mr. Charlton were on the executive committee with him; that they passed on the loans as Executive Committee first, and were brought to the Executive Committee by the officers of the Bank; that Mr. Skinner, Mr. Stewart, Mr. Mullitt, Mr. Lamping, and Mr. Olmstead were loaning officers at that time. (R., 363-364.)

A. C. Longshore was one of the officers of the Bank and had been with it ever since it started. That all the defendants successively named in the

(Testimony of L. B. Menefee.)

caption were his co-workers in the Bank; that Frank O. Bates was cashier up to the time the Bank closed, and he had become filing assistant and vice-president; that Skinner, Stewart and Olmstead were the principal loaning officers and continued to be such during the years they were identified with the Bank, in 1923, 1924, 1925 and 1926 and up to the time of closing; that Mr. Price, Mr. Jones, Mr. Brown, and himself, also made loans; that Mel Young was the general bookkeeper, and kept the record of the condition of the Bank up to the time it closed. Upon question and answer, the witness testified on that subject further as follows:

“Q. Suppose you as assistant vice-president, for illustration, wanted to find out the state of the Bank’s finances, is that the record you would go to?

A. Yes, sir.

Q. And that was supposed to be the record that would tell from day to day the condition that the bank was in? A. Yes, sir.

Q. Was that always kept? A. Yes, sir. [426—96]

Q. Open and observable where anybody could see it that had a right to look at it?

A. Yes, sir.

Q. Now, coming to the matter specifically, so as to take up a lot of timber all at one time, was there an overdraft book kept? A. Yes, sir.

Q. Who kept that overdraft book, say, in 1926, '27, '25 and '24, if there was one kept during this period?

(Testimony of L. B. Menefee.)

A. It was prepared under the supervision of the auditor, but different minor employees took the record off the individual books and compiled them. Didn't have any one particular person over a period of time.

Q. You mean by that, that sundry particular employees of the bank would supply information which ultimately got into the book? A. Yes, sir.

Q. When the book was finally made up, if it ever reached that condition, where did it get to? Who had custody of it, and who kept it?

A. Well, 1926 and '27, it was left for the convenience of the officers, I believe, on top of Mr. Jones' desk. I wouldn't say positively, but I think that is where it was." (R., 376-377.)

The witness then testified that George Hoyt was assistant cashier and had charge of the exchange and collection departments and was authorized to sign drafts; that Mr. Fraley was auditor of the Bank.

That Mr. Horstman worked in the transit department, and that was different from the collection department; that Mr. Decker was in the collection department, which handled items that were left for collection and for which the Bank did not give immediate credit; that the transit department handled items drawn on outside banks which were taken for cash by the Bank, and for which credit had been given either by banks or customers.

By question and answer this witness then testified as follows:

(Testimony of L. B. Menefee.)

“Q. In other words, perhaps a more itemized detail or something of that sort would take a great deal of time to get together, but the total amount that would be represented—or what was carried by your bank, would be readily ascertained by resort to Horstman in the transit department, would it not?

A. Well, it shows right up on this statement every day. [427—97]

Q. Shows right up on the record?

A. Yes, sir.

Q. Was a book or leaf record; what kind of a record was it, the daily statement you spoke of?

A. He gets up a daily statement, yes, sir.

Q. He in turn then, this man Horstman, would send his items to Fraley or to the man who kept the general books?

A. Yes, part of them would go to the country bank ledger and part of them would go to the general ledger.

Q. And would show on each of those each day's business?

A. Yes, and they generally would be consolidated. (R., 393, 394.)

Q. Now, for instance, when the committee reports 'We checked the notes, collateral and real estate,' where would they go, for instance, to check the notes? To the note department?

A. Yes, theoretically. But for a matter of convenience they usually took the notes up in our director's room and went over them up there.

(Testimony of L. B. Menefee.)

Q. They were the exact notes themselves along with the collateral? A. Yes.

Q. Now, in the event that these notes or transactions, whatever they were, had with them guarantees or other accompanying paper, would they, as a matter of the way you handled things, be altogether so they would all be seen at the same time?

A. No. . . .

Q. Would the collateral be in a different place than the note itself?

A. Well, the collateral page and the note page were adjoining pages. They were practically kept together, but when the directors went over the notes they wouldn't necessarily have the collateral at the same time. I suppose they would check that collateral in the collateral cage.

Q. Check the collateral right in the cage?

A. I would presume so.

Q. You say you presume. Now, can you say, as a fact, what they did do, if you know, usually, I mean, during that period while you were there, '24, '25 and '26, whether they checked the collateral right in the cage to save danger, probably, of carrying it upstairs or mixing it up for any other reason, I don't know what?

A. I don't remember of having been present at any time when the collateral was checked, personally.

Q. I show you a letter—and so your Honor understands, I had permission from the Government to withdraw this, and I shall put it back and I will

(Testimony of L. B. Menefee.)

identify it first. I show you a letter, and ask you if you have ever seen it before, and whether it bears your signature? A. Yes, sir.

Q. And you wrote it in the regular course of your duties as assistant vice president?

A. I didn't write it; I signed it. [428—98]

Q. Well, it is one of your official acts, then, for the Bank in the course of its business?

A. Yes, sir.

Q. And is in the original condition, except for some identification marks at the bottom, as it was when it left your hands? A. Yes, sir.

Mr. BRISTOL.—I propose to read this into the record and return it to Mr. Marsh, and am thereby offering it in evidence. Letter identified by the witness and on the letter-head of the Northwestern National Bank;

June 10, 1926.

Mr. J. E. Wheeler,  
c/o Telegram Publishing Company,  
City.

Dear Sir:

We acknowledge receipt of personal guarantee given by yourself to this Bank under date of June 8, 1926, covering loans made by this Bank to the McCormick Lumber Company, up to \$240,000.00.

This guarantee is a continuing guarantee and under same we may continue from time to time to



(Testimony of L. B. Menefee.)

make advances to the McCormick Lumber Company up to \$240,000.00.

Yours very truly,  
A. C. LONGSHORE,  
Assistant Vice President.

Q. Now, when there were such instances as guarantees of that kind would they be kept in the collateral cage you talked about or would they be kept elsewhere?     A. Note department.

Q. Note department. In other words, they would be with the notes, probably not in the same pocket or pouch, I don't mean, but where they could be seen by anybody that was looking up a note?

A. Yes, sir. (R., 394, 395, 396, 397.)

Q. I say I want to know from the general conduct of the Bank as you saw and observed it there, what would be done to find out precisely the general affairs of the Bank—other than what you talked about in that general statement, if at all.

A. If I understand you, Mr. Bristol, when they examined the notes, compiled their notes, they would have a list showing the total notes held by the Bank; when they checked the securities they would have a list showing the securities; when they checked the outstanding bills in transit they would have a total of that amount on the date examined, and so on through the other departments of the Bank.

Q. That is what I wanted to get at.

A. Then when they would complete it they would

(Testimony of L. B. Menefee.)

go and check those totals against our daily balance sheet for that day.

Q. That is what I wanted to get at. And that daily balance sheet is what you tell me was kept by this Mr. Mel Young? A. Yes, sir. [429—99]

Q. Suppose I want to find out whether his particular transaction on that date was an overdraft or not?

A. Look at the individual ledger for his account.

Q. Is that open to everybody who has a right to inspect it—that has a bank right to inspect it?

A. Any official of the Bank, surely.

Q. And therefore it wouldn't make any difference whose account it was, it could be ascertained almost immediately whether there was an overdraft or not, couldn't it?

A. After the completion of the day's business when the items were posted; you see the items are not posted as fast as they come into the Bank. (R., 401.)

Q. That is what I am driving at, and that continued all through 1925 and 1926, didn't it?

A. Yes, sir.

Q. Do you know of anything that would have prevented any Examining Committee or any director or any officer from seeing or knowing of any transaction in that Bank during 1925? If they had looked? A. No, sir.

(Testimony of L. B. Menefee.)

Q. Do you know of anything in that Bank that would have prevented an Examining Committee or any director or officer, if he had looked, ascertaining about the condition of affairs in that Bank in 1926? A. No, sir.

Q. Or in 1927? A. Not at any time.

Q. Now, during any of these times, fixing the time as of—well say from April 26, 1926, onward through 1926, was there ever brought to your attention, or did you know or ascertain about checks on anybody's account that was of any considerable amount being returned? A. Yes, sir.

Q. For nonpayment? A. Yes, sir.

Q. Those checks, were they in amount in 1926, say along after April 26, 1926 to and including, for all I know, down to January 1, or along in that time?

A. You mean did we have any one account where checks were returned more than any others?

Q. Yes, and which you learned about from any source?

A. Well, of course naturally if any large checks were returned on any account, they would be brought to some officer's attention.

Q. Well in 1926 from April 26th on did you ever hear of an institution by the name of the McCormick Lumber Company? A. Yes, sir.

Q. Did you ever ascertain or know as an officer of that Bank during the period from sometime around about June, 1926, progressing along later,

(Testimony of L. B. Menefee.)

any of these checks that were being returned were checks in any large quantity? [430—100]

A. Yes, sir.

Q. Unpaid? A. Yes, sir.

Q. Who did you learn that from?

A. Well, it was a matter of common knowledge.

Q. How general was that knowledge; when you say common; I mean was it known to all of you men in the Bank?

A. I don't think there was anybody in the Bank that didn't know it.

Q. Now, can you fix as near as possible the time when you first learned that checks of the McCormick Lumber Company were being returned unpaid, as near as you can fix it, if you can fix it?

A. Well, I would say it was practically from the time the account was opened.

COURT.—When was the account opened, do you remember?

A. No, I do not, Judge.” (R., 402, 403, 404.)

The witness was then shown ledger sheets to refresh his recollection, and identified the account as being opened with the Bank March 29, 1926, by McCormick Lumber Company and that the check items on that account continued to come back more or less during the entire time, up to and including 1927, and that that fact would have been susceptible of ascertaining by anyone who had to do with the Bank's affairs and that it was generally known in and around the Bank, and on these ledger sheets were the letters “O. D.” indicating overdrafts, and

(Testimony of L. B. Menefee.)

that would be on the Bank's records at the time of closing of individual ledger sheets each day.

“Q. Tell me now whether it was large or small?

A. The ledger sheets themselves would indicate that it was large.

Q. The ledger sheets would indicate what?

A. Large.

Q. Could you say—

A. What did you have reference to were large or small—was that items going through the account or overdrafts?

Q. The overdraft—no I meant the checks that went through.

A. You mean different transactions in the account over a period of that time?

Q. Yes. A. Large.” (R., 406.) [431—101]

Thereupon, the original McCormick sheets were compared with the photostatic copies, and they were offered in evidence and marked “Complainant's Exhibit 2.”

The witness then testified by question and answer as follows: [432—101-a]

“Q. Did you and any other officer of the Bank have any conversation about this account and these checks during the period that they were being handled? A. Yes, sir.

Q. On that subject?

A. Well, it was a matter of more or less concern, and discussed among all of us.

Q. That included everybody?

A. As far as I know.

(Testimony of L. B. Menefee.)

Q. If you conversed first, or somebody conversed with you, who was it and about what time?

COURT.—You mean executive officer or employees?

Q. Executive officer if he knows. Whoever it was. I haven't the least notion yet. I am trying to find out as fast as I can.

A. Judge, let me say that this account was large and a matter of concern in the organization, and it was like in any other concern, it was a matter of conversation among us.

COURT.—Among whom?

A. All of us. Now, I would not want to say that I talked with one man. My opinion is it was talked by all of us. Now, if I say that I talked with Mr. Price, or Mr. Stewart or Mr. Skinner, I might be doing somebody an injustice, but my remembrance is it was all of us.

Q. In other words, it was so generally known that Mr. Price himself knew it?

A. That would be my opinion.

Mr. HART.—Just one moment.

Q. I don't want your opinion.

Mr. HART.—The question should not be put in that form undertaking to quote or interpret the answer of the witness.

Mr. BRISTOL.—Your Honor quite well understands if there was any such insinuation to my question it was unintentional and I don't think it had that.

Q. Were the talks and conditions such that when

(Testimony of L. B. Menefee.)

you say everybody knew it, you meant to include in everybody knowing it, all the officers of the Bank?

A. Yes, sir.

Q. Now, in order to obviate the word officer purely as such, did that include the Chairman of the Board, Mr. Price? What do you say?

A. I just explained that I didn't want to say that I had talked with Mr. Price or Mr. Skinner or Mr. Stewart by name, because I might be doing them an injustice, but I believe it was talked by all of us.

Q. Did you and Mr. Bates ever have any talk about it?

A. I don't think there is any question about that.

COURT.—What position was Bates in the Bank?

A. Cashier.

Q. Bates was cashier, was he not? A. Yes, sir.

Q. And were you ever present at any time or place where—or in your hearing—where Mr. Bates, during that period discussed it with any other officer of the bank, as cashier?

A. Discussed the overdraft now?

Q. Yes, and the condition in this bank of the McCormick account during that time? [433—102]

“A. Well, I think I would answer yes to that.

COURT.—Who was the other officer of the Bank that was present when Bates talked?

A. Well, Judge, there wasn't any reason for me to charge my memory.

(Testimony of L. B. Menefee.)

COURT.—If you don't know, of course say so; that is quite important in this case.

Q. Well, were these talks frequent between you and Mr. Bates in the presence of other officers of the Bank—I will withdraw that and put it this way: like Mr. Skinner, and like Mr. Stewart and like Mr. Olmstead, and like Mr. Price, if at all?

A. I could answer that in a different way, Judge.

Q. Answer in your own way; give me the facts; that is what I want.

A. Here is the way the overdrafts were handled: If an account became overdrawn, before we refused to pay it, the bookkeeper would refer the item to an officer of the bank, and ordinarily if the item was referred to any one of us officers, we used our own judgment in whether or not we paid it, but if it was an item against an account of an important customer, we conferred before we turned it down or paid it, and so naturally this account, being a rather large account, before any action was taken on the checks there would be a conference as to what was to be done.

COURT.—Conference with whom?

A. Well, I presume that if—

COURT.—No, no, if you don't know—if you know anyone you conferred with give the name; if not we will have to take your general statement for it.

A. Well, if the items were presented to me by the bookkeeper I would take them up with Mr. Skinner, Mr. Stewart or Mr. Olmstead—whoever happened to be most convenient at the time.



(Testimony of L. B. Menefee.)

Mr. LOGAN.—That answer is not responsive.

COURT.—Were most of these checks that were returned unpaid taken up with you?

A. That would be an overdraft.

COURT.—I know it would be; we will call it an overdraft then.

Mr. HART.—That is just the point. He is confused as to what an overdraft is.

COURT.—I understand these checks, when they were deposited at the bank were accepted for immediate credit.

A. Well, that isn't the question he asked me. He is asking now with reference to this overdraft at the side of the individual ledger, which indicates the account was overdrawn at the time.

COURT.—Oh, has no reference to checks?

A. It would be occasioned by a check being presented which had been drawn against that account in our institution.

COURT.—That wouldn't have any reference to out of town checks?

A. No, absolutely not.

Mr. LOGAN.—That is why I thought your answer was not responsive.

Q. Now, Mr. Longshore, state whether or not you were one of the trustees of the Dufur Farm & Fruit Company? A. I believe I was. [434—104]

Q. And did you continue such trustee up to the time the bank stopped? A. As far as I know.

Q. And do you know whether Mr. Bates or Mr. Edgar Sensenich had anything to do in some capa-

(Testimony of L. B. Menefee.)

city as trustee of that Dufur Farm & Fruit Company? I believe your relation was with respect to a \$75,000 mortgage some time in 1923, wasn't it?

A. Well, I don't know very much about that.

Q. In which you and Water Brown were trustees, the same Mr. Brown you mentioned before.

A. I was a rubber stamp trustee, and I don't know very much about that proposition.

Q. Do you recall who it was that asked you to become trustee?

A. I think it was Mr. James B. Kerr that gave me the paper and told me to sign my name to that.

Q. Do you know how it came about that Mr. Sensenich and Mr. Frank O. Bates were trustees a day or so afterwards for a \$150,000 mortgage of the Dufur Farm & Fruit Company?

A. I presume it was the same way.

Q. Did Mr. Hoyt, George W. Hoyt, I think you said, who was in this other department with Mr. Brown, until Mr. Brown came over to your side, ever give you any information, or have any talk with you or you with him, concerning returned checks of the McCormick Lumber Company in 1926?

A. I am not sure whether it was checks or acceptances.

Q. Well, any kind of paper that went through the bank somehow and was not paid when it came, concerning the McCormick Lumber Company and/or Wheeler, or anybody else?

(Testimony of L. B. Menefee.)

A. Well, my remembrance would be that Mr. Hoyt talked to me, yes, sir.

Q. Talked to you? A. Yes, sir.

Q. Do you know or remember when he first mentioned it to you? A. No, sir.

Q. Can you say whether it was early or late in 1926? A. No, sir.

Q. You recall definitely, however, that he did have such a talk with you? A. Yes, sir.

Q. To whom, if at all, then, did you impart that information? A. Nobody.

Q. At that time? A. Any time.

Q. Was there anything to prevent any officer, or any official during that period in 1926 that we have been talking about, from ascertaining and knowing just as much as you ascertained and knew about the McCormick transaction?

A. There was nothing to prevent them from knowing?

Q. Yes. A. No. (R., 480, 409, 410, 411, 412.)  
[435—104]

On cross-examination, this witness testified upon question and answer as follows:

“Q. Oh, I am not following any theory. If you can give us an idea of what it would mean to examine thirty thousand accounts, you may do so, otherwise all right.

A. Take considerable length of time.

Q. You said in response to a question that the condition of the bank, the condition of the bank's affairs, was ascertainable at any time by the Exam-

(Testimony of L. B. Menefee.)

ining Committee, or by any director, and I assume you would make the same answer if I asked you if the condition of the bank was plainly ascertainable by the federal bank examiner?

A. It should be more readily.

Q. You would expect a bank examiner to be better able to ascertain the status of affairs of the bank than the Examining Committee, wouldn't you? A. I would, certainly.

Q. The federal bank examiner is an officer whose sole duty is to make examinations of that kind, isn't it? A. Yes, sir.

Q. This city is in the twelfth federal district, is it? A. I believe so.

A. And there is a chief examiner at San Francisco, named Harris? A. There was.

Q. And other work under him in this northwest region, too? A. Yes, sir.

Q. Now, do you know whether Mr. Harris himself made any examination of this bank in September, 1926?

A. Well, that is a matter of record. I think he did.

Q. And what can you say as to the thoroughness of that examination?

A. I couldn't say anything regarding it.

Q. Do you know whether Mr. Harris ascertained that there were many McCormick Lumber Company checks deposited for immediate credit, and later returned unpaid?

A. If he didn't he should have.

(Testimony of L. B. Menefee.)

Q. I didn't ask you that; I asked you if he did.

A. I had no conversation with Mr. Harris at any time, one way or the other.

Q. When this examination was made by Mr. Haris in the fall of 1926, did you inform Mr. Harris of the fact that there were McCormick Lumber Company checks returned unpaid? A. No.

Q. You took no steps whatsoever to bring that fact to the attention of Mr. Harris?

A. Why should I?

Q. Did you take any steps at any time to bring the fact about these returned checks, to the attention of the Examining Committee? A. No, sir.

Q. You testified in the criminal case, United States vs. Olmstead and Wheeler, didn't you?

A. Yes, sir. [436—105]

Q. And you testified there that it was probably in July or August, 1926, but that it might have been September, that you first learned that checks of the McCormick Lumber Company were being returned unpaid by the drawee banks. Is that your present recollection, or did you mean in direct examination here that you learned of it at an earlier date?

A. Pardon me, I thought I said I didn't remember the exact date.

Q. I will be glad to give you what the transcript shows on that. Your attention, you testified, was drawn to this situation by Mr. Bates, and you were asked the question, 'Do you know when this was that you saw this first list that you have detailed

(Testimony of L. B. Menefee.)

here?' That referred to a list of checks which had come back. A. Yes, sir.

Q. And you testified, 'No, I don't; there wasn't any reason why I should charge my memory, but I judge that it was probably July or August, 1926, although I am not positive; it might have been September.'

Mr. BRISTOL.—This is with respect to a list Bates had, not as to his general knowledge.

“Q. Is that testimony substantially as you recall it?

A. Yes, if I understand you right, I don't remember when those items first started to come back. I think I made the statement here this afternoon that they probably started soon after the account was opened; but I don't say that they did.

Q. I don't know whether you meant to say that your attention was called to the fact that checks were coming back—your attention was called to this fact?

A. Yes. That doesn't have anything to do with that list.

Q. This list was the first time the matter was forcibly brought to your attention. Isn't that correct? Isn't that the very thing you said in the other case? A. I don't know.

Q. Is that the truth? I will put it this way: Was this matter of the return of checks brought to your attention in a way that impressed you to any extent, by Mr. Bates showing you a list of checks in July, or August, or September?

(Testimony of L. B. Menefee.)

A. Well, now, maybe we can kind of get together a little bit. When these checks first started to come back they probably came back one or two at a time. When Mr. Bates kept his list they amounted to quite a considerable sum.

Q. Yes. And is that the first time that the matter was brought, as you said in the other case, forcibly to your attention?

A. Yes, the items were coming back in large amounts.

Q. And you said in the other case, according to the transcript, that at one time or another the matter was brought to your attention by Mr. Fraley, Mr. Hoyt, Mr. Bates, Mr. Brown, and Mr. Jones.

A. Well, I say was brought to my attention, or was discussed; it doesn't make any difference.  
[437—106]

Q. Says was brought to your attention. And then didn't you say in answer to the question: 'Now, what about the senior employees?' and the answer is, 'My impression is that it was discussed in my presence by them, but I don't feel that I would be justified in testifying to that effect, because I understand that they have testified that they didn't talk about it.' A. Yes, sir.

Q. These checks of the McCormick Lumber Company, when they came back unpaid by the drawee banks, I understand were not charged back against the McCormick Lumber Company account, so as to create an overdraft, were they?

(Testimony of L. B. Menefee.)

A. They might have been originally, they were not laterally.

Q. Well, the practice that prevailed was not to charge the item back if the customer didn't have a balance to take up the charge. Wasn't that the practice that prevailed in the Bank at that time?

A. Well, I don't know whether you are exactly right there, or not. If we had a check drawn against the 'Oregonian,' we would have charged it back probably, regardless of whether they had any funds or not, unless that was a special account that we were handling, and they had requested us not to charge items back, but to take them *over them*, and they would take them up.

Q. Then, in the case of an account which had a large balance in account, where you knew—

A. Where we relied on them to take the item up immediately.

Q. Where you knew the customer would at once take care of the item?     A. Yes, sir.

Q. Then you would charge it back?

A. Yes, sir.

Q. And notify the customer of the return of the check?     A. Yes, sir.

Q. And in the case of the McCormick Lumber Company, if the practice ever did prevail of charging back items at once, that was soon discontinued?

A. Well, maybe not soon, but it was discontinued.

Q. So that on the face of the statement there would be no overdraft shown as the result of the return of these checks?



(Testimony of L. B. Menefee.)

A. That is my understanding.

Q. Now, you know—at the time you knew that their new checks were constantly being deposited to take care of those which came back unpaid?

A. Yes, sir.

Q. And then presently you would have information that some more checks had been returned unpaid, and presently other new checks would be deposited to take care of those returned checks? That is what you meant was known by you during the summer and fall, and winter, of 1926?

A. Yes, subsequent to the time it was first called to my attention. I can't identify that particular time.

Q. You didn't undertake, did you, to trace any particular check to see whether that one eventually was paid, or whether it came back?

A. I had no contact with the account whatsoever.  
[438—107]

Q. And you didn't undertake then to ascertain how much of the newly deposited checks were good checks or how much were like the ones whose place they took?

A. I had nothing to do with the account.

Q. You only knew that a large volume of checks was passing through, and you assumed that some of them each time were not good checks, because—

A. Well, not necessarily each time, but there was checks coming back continuously.

Q. What assurance, if any, did you either receive

(Testimony of L. B. Menefee.)

or hear about after the manner of taking care of these unpaid checks?

A. Just how was that?

Q. Perhaps that is a little bit vague. Is it a fact that when this matter was discussed, as you say it was discussed, that all understood that the president of the Bank either had secured or was securing adequate protection from J. E. Wheeler, to take care of these checks?

A. I wouldn't say that I had any knowledge of that.

Q. Did you know that this particular account was in the personal charge of the president of the Bank?

A. Yes, sir.

Q. And was that fact known and understood by all the junior employees? A. Yes, sir.

Q. And is it a fact that all of the developments in this account were referred by the junior employees to the president of the Bank directly—I will change that—either directly, or through Mr. Bates, the cashier?

A. Well, I don't know as I would want to quite go that far, but I will say that he was kept in touch with the situation of the account at all times.

Q. Is that the reason that you yourself never felt called upon to do anything about this matter?

A. No.

Q. The reason, then, I take it, is that you thought it was outside of your duties?

A. No, not necessarily that, either. Do you want me to tell you why I didn't?

(Testimony of L. B. Menefee.)

Q. I have asked you.

A. I didn't understand you asked me that question. When this matter was brought up from time to time for discussion, particularly when you would discuss this list, that meant a large account, and Bates came to me very much perturbed, and I asked him immediately if Mr. Skinner knew it; and he said yes, he had taken it up with him; and subsequently when he came to me with his list I would ask him the same question, if the other senior officers of the Bank had been apprised, and he would tell me yes; and I thought if he had taken it up with them I didn't see any reason why I should.

Q. He didn't tell you which senior officers, except he told you Mr. Skinner, once?

A. My remembrance would be that he told me right along that he had taken the matter up with Mr. Skinner. That is my best memory.

Q. You just told us that you understand, and all understood, that this whole McCormick Lumber Company matter was in the personal charge of the president. Now you say Mr. Bates told you he took it up with Mr. Skinner?

A. Yes. [439—108]

Q. Did he ever tell you he took it up with Mr. Olmstead?

A. That wasn't necessary for him to tell me, because I have seen him a number of times take it up with Mr. Olmstead; you might say daily.

Q. Do you know, who it was among the senior of-

(Testimony of L. B. Menefee.)

ficers who O. K.'ed these checks so they were entitled to immediate credit?

A. Well, what period are you speaking of now?

Q. I am speaking of the period from 1926—from March, 1926, to the end. What officer was it who approved or O. K.'ed the checks of the McCormick Lumber Company, so that the bank gave the McCormick Lumber Company immediate credit for them?

A. Are those checks in evidence? Are those checks here?

Q. No. Well, you know. You know they were all O. K.'ed by Mr. Olmstead, don't you?

A. No, I don't know that.

Q. Were those checks exhibited to you in the course of the criminal trial? A. No, sir.

Q. You have never seen them?

A. I saw them up here on a board, but I never went over them myself, no.

Q. By whom were the checks you saw, O. K.'ed?

A. You mean in this criminal trial?

Q. Yes.

A. I don't remember. Did I see them?

Q. You just said you had them before you.

A. No, no, I didn't. I said they were up here before another witness.

Q. Did these customers' ledger sheets, such as Exhibit 2, in evidence—where the word "OD" appears opposite an item, I take it that that does not mean that at the close of business that day there was an overdraft in that customer's account?

(Testimony of L. B. Menefee.)

A. Not necessarily.

Q. The entries would be posted up at the end of the day's business, and then it would be determined whether or not there was any overdraft in that account.

A. I think the mechanics are this: As the posting is continued during the day, if check should come in *the* preceding a deposit, then that "OD" would show at the side of the column; later in the day, if deposits came in, then that would make the account all right at the close of that day's business.

Q. So that the initials "OD" appearing at different places in the customer's ledger, didn't necessarily mean that at the close of business on any day that there was an overdraft in that customer's account?

A. Not unless it shows at the close of business.

Q. And whenever there was such an overdraft at the close of the business, then that fact would be listed in an overdraft statement, or an overdraft book? A. Yes, sir.

Q. And anyone examining the affairs of the Bank that particular day would go to that overdraft book to ascertain what overdrafts were made?

A. Yes, sir. [440—109]

Q. And, as you explained a minute ago, the return of unpaid checks which had theretofore been credited to the depositor, would not create an overdraft unless they were charged back to the customer's account? A. Yes, sir.

(Testimony of L. B. Menefee.)

Q. Did you, Mr. Longshore, find out about the passing through of these McCormick checks by your own investigations, or did you find it out because some other employee of the Bank told you about it?

A. Well, it would have to be referred to me, because I had no connection with the account.

Q. You can answer that question quite directly. Did you find it out by personal investigation, or was it told you by some other officer, or some other employee?

A. Do you mean before I had any knowledge of this proposition, that I went to their ledger, or to the transit department, and made a check?

Q. Yes.      A. No, absolutely not.

Q. No one told you that there was something to look up, whereupon you went and looked it up?

A. No.

Q. That wasn't it, was it?

A. Not to the best of my knowledge.

#### Redirect Examination.

(Questions by Mr. BRISTOL.)

Not having gone and made a special trip to look it up, anybody else there in that Bank was in the same position of general knowledge as you *you* were, with that thing, as far as you know?

A. Why, yes, I should think so." (415-16-17-18-19-20-21-22-23-24-25.)

Upon question and answer the witness further testified as follows:

(Testimony of L. B. Menefee.)

Q. Now, about the thirty-three thousand accounts. If thirty-three thousand accounts, or any other number of accounts in the Bank, were to be examined by somebody—if somebody had to do it, it is not impossible, is it? A. No.

Q. It is only a question of time, isn't it?

A. It isn't done.

Q. I beg your pardon? A. It isn't done.

Q. It isn't done; but I say if it became necessary to do it, it could be done, couldn't it?

A. Yes, sir.

Q. Now, no Examiner, even a regular Bank Examiner, examines all the customers' accounts in the Bank, does he? A. No, sir.

Q. To find out its condition?

A. No, sir. (R., 427, 428.) [441—110]

\* \* \* \* \*

Q. Did you discuss it, or did he say to you how much the checks then amounted to at that time, when Bates did show you this list?

A. My remembrance is, yes, he did.

Q. And do you recall what amount he said?

A. No, sir.

Q. Either from the list, or by list separate therefrom? A. I do not.

Q. But you are convinced that Mr. Bates did so state? A. Yes, sir.

Q. Would it be your recollection that that was over any specific sum of money, small or great? Did it run into the hundreds of thousands, or was it

(Testimony of L. B. Menefee.)

down into the ten thousands, or do you have any recollection at all?

A. My recollection is it was in excess of a hundred thousand dollars.

Q. In excess of a hundred thousand dollars, on this list Bates showed you in July or August, 1926?

A. When the list was first called to my mind, we more or less identified it with July or August, I didn't say it was.

Q. When you testified in the criminal case, in the matter that Mr. Hart was talking about, was any list that Bates showed you presented to you then, when you were a witness in the criminal case?

A. No, I think not." (R., 429.)

By the statement that an account was in the personal charge of the president, witness meant, to illustrate, that when an employee from the "Telegram" would come in to make a deposit the item would be taken to Mr. Olmstead to be O. K.'ed. The junior officers had instructions not to take any items for the Wheeler in the name of the McCormick Lumber Company unless O. K.'d by a senior officer of the Bank. Mr. Skinner and Mr. Stewart would not O. K. them so they had to go to Mr. Olmstead.

The junior officers always looked to Mr. Olmstead for their instructions and in his absence to the senior vice-president. Other officers had authority to O. K. checks.

Upon question and answer, the witness testified:  
[442—111]



(Testimony of L. B. Menefee.)

Q. I say, don't you know that there were other officers in that Bank who had authority to O. K. checks in such instances? A. Absolutely.

A. And that those officers had as much right to exercise that authority to O. K. such checks, as Olmstead had? A. I think so.

Q. Now, then, do you undertake to say that during this period, say from March 29, 1926, to March, 1927, that Olmstead was *always* there so that it would never come to any other officer to O. K. a check of the McCormick Lumber Company on an outside Bank, or any other transaction with your Bank?

A. No, he wasn't always there. (R., 434.)

The witness then testified that withdrawals had become noticeable along about the first of February, 1927, and that rumors had existed before that time concerning the condition of the Bank. [443—111-a]

Thereupon the witness was asked the following questions and gave the following answers, and the evidence shows:

“Q. And so, from the first of February, down to the time that the crisis took place, I am to understand that you knew that the savings deposits were being gradually withdrawn in volume, and that you knew nothing that the directors did in that Bank about it, or about your then financial condition?”

A. Well, if I understand your question, what could they do?

(Testimony of L. B. Menefee.)

Q. Very well, we will leave it then. Are you familiar with clearing-house practices?

A. Not in detail.

Q. I beg your pardon? A. Not in detail.

Q. Well, there was a clearing-house in the city of Portland, wasn't there? A. Yes, sir.

Q. And also a Federal Reserve Bank?

A. Yes, sir.

Q. Now, isn't it true or don't you know, with respect to what could be done, that if people have sufficient current assets in the Bank, that they can go to the clearing-house and to their Federal Reserve Bank, and get money when a crisis reaches them, if conditions are such. Don't you know that, as a banker?

COURT.—No question about that.

Mr. HART.—Of course, if they had the assets, as the Court said.

Mr. BRISTOL.—If you gentlemen concede there was an opportunity to do something.

Mr. HART.—We make no admission for the record.

Mr. BRISTOL.—Or making a side remark. I asked the witness a question, and the Court said it was self-evident.

Q. Do you know whether or not anything was done by the board of directors in the month of February or March, 1927, to enable the Northwestern National Bank to continue in business, and conduct itself as a Bank, as you saw it there, prior to the

(Testimony of L. B. Menefee.)

time it shut down, and if so, what did they do, if you know?

A. They gave the matter every consideration, but they didn't discuss it with me.

Q. Well, how do you know they gave it every consideration?

A. You can tell what is going on around an office; the meetings that took place, and one thing and another.

Q. I asked you a while ago about that, and you said you didn't understand my question. Now what did they do?

A. You said you could tell by what was going on around the place. Now, what did they do?

Q. I didn't meet with them; I couldn't know what they did unless I did meet with them. [444—112]

Q. Then why do you *profer* that they did everything they could do? That is what I want to find out, what did they do.

A. Well, I think there is something that you know, that you can't explain.

Q. Do you know anything about what the directors did? A. No, sir.

Q. Is there anything about what any director did, that you know, that you cannot explain?

A. Oh, I don't just follow you now. What do you mean by that?

Q. I took your own words; I don't think there is anything very mysterious about it. You were right there in the Bank, weren't you?

(Testimony of L. B. Menefee.)

A. Surely.

Q. Now, it is a simple thing to tell us, if you know, in those days, as you fix it, when your savings accounts commenced to be withdrawn, and you say gradually increased withdrawals until finally it came to the day of the bank's closing—now it is a simple thing, if you know: I asked you what was being done by the directors?

A. I don't know." (R., 437, 438, 439.)

On redirect examination this witness testified that customers came into the Bank along about the first of February with rumors that the Bank was not safe and that they had heard the Bank was going to close its doors, some before and some after the first of February. Apparently these rumors were based upon what somebody had told somebody else, that the Bank was not safe and that it had losses sufficient to worry depositors, and that witness noticed that this was conversation which came not only to him direct, but to other officers of the Bank, and he thought it came to all of them, and commenced as early with the other officers as it did with him. That it was rumored on the street that there was a sale of the Bank pending, that he did not hear that officially from anybody in the Bank, but that they all had heard it, in a sort of grapevine way; that the first time he heard of a sale was in 1923, the same sale that Mr. Ainsworth had talked about, but that he had heard by rumor both inside and outside of the Bank, with regard

(Testimony of L. B. Menefee.)

[445—113] to the period about January 1, 1927, to March 28, 1927, that the bank was to be sold; that his fellow officers had discussed it with him after the first of the year, notably Mr. Bates, the cashier, and also Brown and Hoyt, and this was first a rumor that it was to be sold to the United States National and then there was a rumor that it was to be sold to the First National.

That the rumors at any rate that the witness had heard came before the alleged discovery of the Bank officers of the float, and before the change in presidents on March 1, 1927, but were aggravated afterwards.

Then as part of the evidence, it was stipulated that in addition to the compensation received as directors, the following sums were by the Bank paid to the members of the Examining Committee at the times set forth, to wit:

“Originally, in May, 1921, to Messrs. Kelley, Charlton, and Metscham, \$150.00 each; in December, 1921, Kelly, Charlton and Metschan, \$225.00 each; in February, 1922, to the members of the examining committee, \$175.00 each; November 3, 1922, \$200.00 each; August, 1923, \$200.00 each, making \$600.00 for the three members. December, 1923, when Mr. Spalding, Mr. Metschan and Mr. Charlton were on the Board, \$200.00 each; and in March, 1924, Mr. Metschan, Mr. Spalding and Mr. Charlton, \$200.00 each. October, 1924, same names, \$200.00 each; May 10, 1925, and between that and May 28th some time \$200.00 each; December, 1925,

(Testimony of L. B. Menefee.)

same amount each, and same members. May 6, 1926, and between that time and the 20th of May, \$200.00 each, same members. November 26, 1926, payment as of December 9, 1926, same members, \$200.00 each, \$600.00." (R., 446.)

#### TESTIMONY OF E. H. COLLIS, FOR COMPLAINANTS.

It was proved by the witness E. H. COLLIS that the Ballin stock was first paid for July 11, 1918, for 100 shares at \$125.00 per share, or \$12,500.00, and in July, 1922, for 100 shares at \$150.00 per share, or \$15,000.00. [446—114]

#### TESTIMONY OF GEORGE C. WATKINS, FOR COMPLAINANTS.

Then appeared GEORGE C. WATKINS, on January 7, 1927, who had represented Spaulding Pulp & Paper Company and who stated that he had approached the witness concerning the Ballin stock and wrote a letter to the witness accordingly. That witness forwarded the letter to Ballin to which Ballin made some answer direct.

Thereupon the witness last referred to in the Collis testimony was called to the stand and shown the letter written to Collis, and acknowledged that he received the reply to the letter, from Ballin; the original reply was identified and the letter offered in evidence and marked Complainant's Exhibit 4.

(Testimony of George C. Watkins.)

Thereupon another letter was offered in evidence, and marked as Complainant's Exhibit 5.

That the witness had asked Mr. Spaulding if he was interested in the purchase of the stock, and Spaulding replied that he was not. This arose from the witness' connection with the Spaulding Pulp and Paper Company.

Upon cross-examination it was brought out from this witness that in the sale of the securities to the Spaulding Pulp & Paper Company, he made trades for other stock and securities of the Paper Company's stock; that his principal business at that time was the selling of securities of the Spaulding Pulp & Paper Company.

#### TESTIMONY OF FRED BALLIN, FOR COMPLAINANTS.

Thereupon, BALLIN, one of the complainants, testified that he was a resident of Los Angeles, California, and that on January 28, 1927, he had occasion to communicate with Emery Olmstead regarding a letter which he had received from Olmstead asking him to withdraw his stock from the market. [447—115]

That he had transmitted all of the correspondence between Collis and Watkins about the Spaulding suggestion made by Watkins, and about the Collis suggestion made from Watkins, to Olmstead.

Thereupon Complainant's Exhibits 6, 7 and 8 were introduced in evidence, also there was intro-

(Testimony of Fred Ballin.)

duced in evidence a telegram from O. L. Price, dated March 26, 1927, addressed to Ballin, which Mr. Ballin identified as having been received from Mr. Price, one of the defendants. The same was received in evidence of complainant as Exhibit 10.

That Emery Olmstead and John Twohy had submitted a paper writing which bore his signature for 200 shares, that followed the March 26, 1927, suggestion of the telegram and letter. Thereupon Complainant's Exhibits 11 and 12 were received in evidence; and it appeared in the letter written by Olmstead, president of the Bank, that he stated, "I am considering the offer of sale you made as an option and will keep you advised of anything that takes place, and will of course protect your interest." Thereupon Olmstead sent him a telegram, which was received in evidence as Complainant's Exhibit 13, and thereupon there was offered in evidence as Complainant's Exhibit 14 the letter of Francis P. Graves concerning the 200 shares of Northwestern National Bank stock in the name of Fred Ballin.

The witness Ballin was then shown the Bank stock and certificates of its endorsement and pledge as collateral on some stock transactions that Ballin had had with Graves & Company. Thereupon the witness produced the written statement of Graves & Company with regard to that transaction by way of letter dated [448—116] January 3, 1927, and the same was offered in evidence as Complainant's Exhibit 15.



(Testimony of Fred Ballin.)

That the witness had been trading with Graves & Co. and that Graves & Company had simply taken this stock at the suggestion of their Bank and had it transferred; that it was Ballin's stock and Olmstead had informed him that Graves & Co. had had the stock transferred in their name; that he had never given any proxy to Graves & Company to vote his stock at the meeting of January 11, 1927, and that he never got any notice from Graves & Co. that they were voting his *stock* any meeting of the Bank with his consent or in any other way. Thereupon certificates were marked to show when Graves & Company released their ownership of this stock, and some were accepted in evidence as Complainant's Exhibits 16 and 16-A; that the witness learned of the transfer of the stock by Graves & Co. from Mr. Olmstead in 1926, after it was done.

That witness had frequently talked to the directors of the Bank from time to time as he was in and out of the Bank, for six or seven years while he was in Portland and while he was in the office of Olmstead, and as he would meet the different directors, and they all would tell him that the condition of the Bank was excellent; that he never had any information contrary to what was given out in the printed reports, from Mr. Olmstead or anyone else; that he was not called on in 1927 to contribute any money to the Bank, and no one had ever asked him to put up any money in 1925; that, in fact, from 1923 on down to the end, he was always assured that the Bank was in good condi-

(Testimony of Fred Ballin.)

tion; that in 1926 Mr. Olmstead told him that he had a reorganization planned by which the company would subscribe [449—117] and take over the frozen assets of the Bank, and that he would try to reorganize the Bank into a state institution; that all of the directors had agreed to that, and for him, Ballin, not to worry and not to try to sell his stock, that it was all right and that he (Olmstead) could get him full value for it. (486) That Olmstead had taken an option on his stock in March, 1925, and that was the same stock that was referred to in the letters of 1927.

Thereupon was offered in evidence Complainant's Exhibits 21 and 26 inclusive, being the oaths of office certified to by the Comptroller for the directors for the years 1922, 1923, 1924, 1925, 1926, 1927. (R.,490.)

#### TESTIMONY OF — DECKER, FOR COMPLAINANTS.

DECKER, who worked in the collection department in 1926, heard of collection items on account of the McCormick Lumber Company; that they commenced shortly after 1925, and some of these items came back every two or three days, and they would be thrown into Cash Items, and the witness noticed that they were increasing and there were some of these McCormick Lumber Company checks in the Cash Items before the account was opened March 29, 1926; thereupon, the following colloquy took place between the Court and the witness:

(Testimony of — Decker.)

“COURT.—And taken up when the account was opened?

A. Yes, sir.

Q. You say they were taken out of that account?

A. Taken out of Cash Items.

COURT.—When that account was opened some of the McCormick checks were taken out of the Bank?

A. They were charged back to this account.

COURT.—No, the Bank Examiner reported certain Cash Items, McCormick Lumber Company checks, as Cash Items, as I remember the testimony.

A. Yes, that is right.

COURT.—And when this account was opened they were taken up.

A. They were charged back to this account.

Q. They were charged back in there, as far as the Bank records are concerned, when you got a check of that character they went back into that thing so that there was some record kept of it, wasn't there?

A. This is the record right here. [450—118]

Q. That is what I thought; that is what I tried to tell the Court before.

A. These debits—a good many of these debits on the debit side of the ledger, are not checks of the McCormick Lumber Company on us, but charge back items.

COURT.—They were items that were carried as Cash Items prior to the time that this was opened?

A. Yes, sir, that is right.

(Testimony of — Decker.)

Q. And these sheets exhibit then, a series of these particular transactions as they grew from time to time after that account was started in March, 1926?

A. Yes, sir." (R., 494, 495.)

That these items so carried in the account were large in the summer of 1926 and that he knew, from approximating the amounts that they were large, but that he did not have them all at one time until 1927; that he always referred the items to George Hoyt, the assistant manager in the department, and that he knew all about them. Mr. Hoyt was his superior officer, and that Mr. Fraley, the assistant cashier and auditor, had been around the department in respect to these items in 1926 about once in every two weeks in the latter half of the year; that he had informed Mr. Fraley when he would have these Cash Items representing checks that came back unpaid, and Fraley came into the department and had taken the items himself to look them over and that if the items were running in large amounts in the collection department unpaid, they would be shown in the Bank's condition when made up as Cash Items and should have been carried as Cash Items, and the Cash Items were the ones spoken of in 1926 and '27; that they had to be carried in the Bank's assets somewhere, and it was carried in the collection department each night.

Thereupon the Court asked the following question of the witness Decker, and his answers were:  
[451—119]

(Testimony of — Decker.)

“COURT.—Do you make a distinction between Cash Items and items for collection?

A. Cash Items are part of the bank's assets; and items for collection have not been paid yet, no credit has been given on them, and they are not the Bank's assets.

COURT.—I have not been through this for a week or ten days on the criminal case.

A. The collection items don't show on the bank statement at all.

Q. A customer might put in a check for collection, and that does not appear in the Bank. Is that what you mean?

A. That is it; that does not show on the bank's statement.

Q. Does not show on the bank's statement at all?

A. No, sir.

Q. When you want to find a record of what that bank had, in order to get the cash right, you had to have the total of your cash represented by the collection, didn't you? A. Yes, Cash Items.

Q. Represented by collections?

A. Represented by Cash Items, not collections.

Q. Yes, represented by Cash Items. I don't want to get those two things mixed; would be right in the collection department; these things called Cash Items, that you had returned, you had to make some statement of it; how do you do that?

A. The Cash Items. It is necessary to get a total, a correct total of Cash Items; I think that

(Testimony of — Decker.)

is what you mean—to balance the day's work in the bank.

Q. Yes. A. Yes.

Q. Suppose we take a large amount, \$100,000 or more—what I want to know, if you can tell me from your knowledge—if there had been like yesterday so-called Cash Items gone out, that represent that \$100,000, and they come back today \$100,000 unpaid, how would that be handled in your records so that the other bank people would make the entries in their books? A. We simply listed.

Q. What? A. Made a list of it.

Q. Do you know anything about a list sometime in July somewhere that was up there or shown to anybody? A. 1926?

Q. Yes. A. July, 1926?

Q. Yes. A. List that was there?

Q. Shown to anybody; list of these Cash Items that were shown to anybody?

A. Someone in particular; out of our department?

Q. Yes, in the bank.

A. Well, I always showed them to Mr. Hoyt, and I also told Mr. Olmstead when any items came back.

Q. How often did you tell Olmstead that items came back?

Mr. HART.—You are referring now particularly to these McCormick items? [452—120]

A. Yes.

Q. How often did you tell him one came back?

A. Whenever one came back into the department.

(Testimony of — Decker.)

Q. How often was that, then?

A. Every day, or two, or three, or four. Sometimes would miss two or three days: twice a week at least.

Q. You must have some idea left yet in your mind that approaches the fact of about what that all amounted to, haven't you?

A. I know what it amounted to in 1927, when they accumulated in the Cash Items.

Q. What did it amount to then?

COURT.—The float, you are referring to now?

A. Yes. Close to \$800,000.00. That is the only time they were all in there at one time, so that is the only time I knew exactly how many there were.

Q. Did that result as a calculation by taking the difference between the debit and credit side of the account, of what had been sent out, and what had been returned?

A. No, those were all returned items.

Q. Those were all absolutely net returned items?

A. Returned unpaid.

Q. How much was that in 1926, in the fall?

A. Fall of 1926?

Q. Yes, if you know.

A. Of course I don't know, but it was probably somewhat less than that in the fall of 1926." (R., 500, 501, 502.)

Thereupon the following question was asked and the witness testified:

“Q. Did you ever make out a sheet—we were told something here about a sheet that was ex-

(Testimony of — Decker.)

hibited to Mr. Frank O. Bates, cashier. Do you know anything about that sheet?

A. What was it on?

Q. I don't know; I never saw it; but a witness said there was a lot of Cash Items.

COURT.—A list of McCormick items.

Q. McCormick items, in July, 1926, or thereabouts.

COURT.—Some time in June, and before August.

A. I doubt if I made out a list and gave it to him; I don't think I did.

Q. Then somebody else must have made out that list.

COURT.—If one were made out, certainly they did, if he didn't make it out.

Q. Could you tell me, please, who might have made that list out, besides yourself, that had access to the same facts that you did?

A. Anyone else in the department of Mr. Fraley, any of the auditing department, or he may have gone in there and made the list himself.

Q. Mr. Fraley? A. Mr. Bates.

Q. Mr. Bates could have gone in there and made a list himself? A. Very easily. [453—121]

Q. Mr. Olmstead could have done the same thing, couldn't he? A. Yes.

Q. Wasn't anything to prevent anybody doing it that had a right to be in the bank, was there?

A. No, I guess not.

Q. Now, did you ever—during the period you



(Testimony of — Decker.)

were there, from 1920 to 1927, were you in the collection department all that while? A. No.

Q. What part of the latter part—you were there in 1925; were you there in 1924, in the collection department?

A. I think I was there since 1922.

Q. Now, did you ever see Mr. Metschan and Mr. Spaulding, and Mr. Charlton, working around there as an examining committee? A. Yes.

Q. Did they ever come into your department since 1922?

A. I don't know that they have ever been directly in our department; they have always had all our stuff.

Q. I say, did you ever see them in there at any time from the time you first went in the collection department, until the bank closed? Did you ever see them in there at any time?

A. I can't say that I have, strictly in the department.

Q. Did they ever inquire of you about any particular item in that department?

A. I don't remember that they did.

Q. And do you know of anybody in that department with you that they inquired of for items in that department? A. I don't know of any, no.

Q. What is that? A. No, I don't.

Q. Well, with respect to your duties in the bank, what is the fact as to whether you would be in that department during banking hours most of the time, or only part of the time?

(Testimony of — Decker.)

A. Most of the time.

Q. Would it be true to say, as far as you know the fact, and were there, that had anybody inquired of that collection department for information about checks returned, you would have known about it?

A. Well, the item could have easily been given without my knowing it, but I presume I would have known it. Mr. Reed could have given the information.” (R., 504, 505, 506.)

Then the Court asked the following questions and the witness gave the following answers:

“COURT.—What did you do with the collection item then?

A. Then it was necessary to hold it as a Cash Item.

COURT.—How long?

A. Until it was taken out of the Cash Items.

COURT.—I understand that.

A. Three or four days probably, or maybe the next day, or maybe the same day. [454—122]

COURT.—How was it taken out of Cash Items, by giving another check?

A. Another check was drawn and deposited to the credit of the company, and then these checks were debited back to the company to offset it.

COURT.—That was the course of doing business?

A. Yes.” (507.)

Thereupon the witness was asked whether he wanted the Court to understand that it was usual in 1925, when he first knew about the McCormick account and then it stopped awhile, and then it went

(Testimony of — Decker.)

into 1926, down to the time the bank closed, the practice in his department for the McCormick account to be handled by charging back only some items when there was money to meet it, and he gave the following answers:

“A. That is right.

Q. And other times holding it open until they could get a check in to cover it?

A. That is correct.

Q. And that is the way that happened all the time, is it?

A. That is the way that account was handled all the time.

Q. That you were there? A. Yes, sir.” (508.)

Then the witness was asked the following question and made the following answers:

“Q. Do you know how Mr. Fraley could have kept the books of the bank without taking into consideration the items that you were so carrying?

A. No, they have to be taken into consideration of the bank’s business all the time, each day.

Q. Was anything to prevent, as far as you could see or know, any officer or official of that bank acquiring the same knowledge that you yourself had during the period of this transaction?

A. No, I don’t.

Q. Now, did you have anything to do with these things we call Bills in Transit?

A. Yes, those were in our department.

Q. Those were in your department? A. Yes.

(Testimony of — Decker.)

Q. Now, not to be technical, but I want to know this: Do you call these things that we have been talking about, as the Court and I have called checks which you treated as Cash Items, Bills in Transit? A. No, sir. (R., 511, 512.)

Q. And in this McCormick instance it amounted to taking a chance on the check being paid before anything was applied to the account? [455—123]

COURT.—Their check was credited to the account when deposited?

A. That is right.

COURT.—The check was credited to the account when deposited, and credited as cash.

Q. And so the amount which you had checks unpaid, the bank was always out that money?

Q. Now, then, there is another difference as I understand it, between these Bills in Transit, and collections, and that is one was an uncharged item, that is you put it through without any charge there, for service or collection fee to the customer; and the other character of transaction, to wit, a regular transaction perhaps, unless was some very large customer, or some favor existed, he was charged for that service. Is that right?

A. No, that is not right.

Q. What is right, then?

A. Bills in Transit, each one—collection charge is made on collections as well as on Bills in Transit, each one of them; that is none of them were handled for nothing. The charges were not the same,

(Testimony of — Decker.)

were figured the same, but neither was handled for nothing.

Q. Well, then I am to understand that on the so-called Bills in Transit in this McCormick account there was a charge?

A. Those are not Bills in Transit items.

Q. I thought you said no difference between these checks charged as Cash Items, and Bills in Transit?

A. No, I didn't say that, I think.

Q. Then I certainly misunderstood you.

A. Credit has been given on both of them. They had credit for these—what we call Bills in Transit had been credited to the depositor; in that respect they were alike.

Mr. LOGAN.—As I understand it.

COURT.—When they came back to your department and came back unpaid; they went to the collection department.

A. It is a little unfortunate that the collection department happened to be mixed up with the Cash Items, because Cash Items are really entirely foreign to the collection department. They could be handled in any department of the bank just as well; collection item has nothing to do with these Cash Items at all, except we had them; they haven't anything to do with the department.

Q. Under whose instructions do they get into your department?

A. They simply had always been there.

Q. That is the way you ran the bank?

(Testimony of — Decker.)

A. Yes, sir; we had to take care of them somewhere, and it is the collection department takes them; but they haven't to do with the collection part of the collection department.

Q. Now, do you have any knowledge of your own as to whether or not any of these items existed after April or May, 1926?

A. That was just previous to the opening of this account, wasn't it? [456—124]

Q. No, this account opened in March, according to this here.

A. Yes, there were lots of them; they are all right on these sheets.

Q. Those sheets there? A. Yes.

Q. Do you know what the total carry was of those items on the 19th of November, 1926?

A. I do not.

Q. If Mr. Fraley gave that amount, he would be the likely one to know, wouldn't he?

A. Yes, if he can make a statement; he could tell if he could find his record; in all probability there was no record except a temporary one made.

Q. Well, they did make them, you say, from time to time, for Hoyt, Bates, and Fraley?

A. I always made one for Mr. Hoyt and Mr. Olmstead; I don't know about the rest of them." (R., 512, 513, 514.)

On cross-examination, this witness testified as follows:

When the McCormick account was opened pres-

(Testimony of — Decker.)

ently checks which had been deposited and for which credit had been given, were returned by the drawee banks unpaid. They would then find their way into the department handled by the witness and would be classed as "Cash Items." They would be held there until they were taken care of. If for lack of funds in the depositor's account they could not be charged back to the depositor's account, they would be held until the depositor took care of them, either by making a new deposit to increase his balance so that these returned items could be charged back, or until he would take them up in some other way.

"Q. The amount that was on hand in these Cash Items. And the question you answered a moment ago about how much was being carried at any specific date, did you interpret that to mean how much the total of these Cash Items would be at any date? That is what you understood, is it not?

A. I understood the question to mean if I knew how many of these McCormick Lumber Company checks had been credited to their account? I didn't know that. [457—125]

Q. You would have no way of knowing at any time which ones of the checks thus credited were going to be paid, and which ones were not going to be paid? A. No.

Q. And you could at any time make a statement of the returned checks?

A. In the Cash Items, yes.

(Testimony of — Decker.)

Q. In the Cash Items of any particular day?

A. Yes.

Q. And that of course would change from day to day, would it not? A. Yes.

Q. The daily statement of the bank necessarily would show the total of Cash Items in your hands at the end of each day's business? A. Yes.

Q. And whatever McCormick checks that might happen to be there, deposited checks returned unpaid, would be given in that total? A. Yes.

Q. And that total, I take it, would vary considerable from day to day? A. Yes, it would.

Q. And that Cash Item, is there anything else that goes in that except the returned unpaid checks?

A. Well, a few little expense tickets that were only charged up twice a month, perhaps. The rest of the items were all small, salary advances, and such things as that. [458—125-a]

The principal part of that Cash Item total, then, would be returned checks?

A. Unpaid checks, yes.

Q. That had been credited to the depositor's account, but had not been paid by the drawee Bank?

A. That is right.

Q. And that, as you say—the total of that would vary from day to day? A. Yes.

Q. But you could furnish at the close of every business day, the total amount of Cash Items appearing in your department? A. Every day.

Q. You were asked about the members of the Examining Committee and their investigations, and



(Testimony of — Decker.)

you said that they didn't actually come into your department. Do you mean by that that the examining committee didn't have any opportunity of examining what was going on in your department?

A. No, sir. I answered it just as it was asked.

Q. I know you did, and I would like to have you supplement that by giving the facts how they examined your department.

A. The Cash Items were listed in the usual way, whenever the examining committee was in the Bank and they were handed to Mr. Fraley with a list of all the Cash Items, that he might go over them with the examining committee.

Q. And if at the close of the day when the examining committee was doing this, there were a few, or only a few, or no Cash Items, the examining committee then would have no way of knowing how much was on the way for collection, or returned, would they? A. No, they wouldn't.

(Questions by Mr. HAMPSON.)

Let us assume that the first day of the month \$50,000 had been charged back because the drawee Bank had not honored the item, and you had called that to the attention of Mr. Olmstead, and corresponding credit had been made to the account of the depositor, at the end of the day that report would show clear in your department, wouldn't it?

A. Yes, sir.

Q. And if an examination were made by a Bank Examiner, or examining committee, or any Bank official who had no knowledge of the fact that these

(Testimony of — Decker.)

items had come into your hands and been wiped out by this corresponding item, there wouldn't be any way he could tell that from your record, could he?

A. No way.

#### Redirect Examination.

(Questions by Mr. BRISTOL.)

I just want to know one thing you answered for Mr. Hart. You said it would show in the Bank records what those totals were each day. Now where would that show in the Bank records?

A. Show on our daily sheet, collection department, where they were listed. [459—126]

Q. And you turned that in to whom?

A. Turned it in to the general bookkeeper in the same way.

Q. To Mel Young? A. Yes, sir.

Q. And then Mel Young would enter them, and that entry you don't know anything about?

A. That is the entry I can't say positively." (R. 518, 519, 520, 521.)

#### TESTIMONY OF WALTER R. RINGSRED, FOR COMPLAINANTS.

WALTER R. RINGSRED testified that he started as junior clerk and worked up in the Bank to the position of assistant cashier, in charge of the personnel and the physical operation of the Bank, and that covered the period down to the time the Bank closed; that he was familiar with the McCormick account from the start, and particularly when

(Testimony of Walter R. Ringsred.)

it was the Bank in 1926, about July, and that checks were then being deposited in the Bank and were placed to the credit of this account but many of them were being returned unpaid. This was discussed with several junior officers, particularly Mr. Bates, and when the checks were brought to Bates for O. K., he referred them either to Olmstead or others who would have O.K.'d. them. These checks went through the collection department and the transit department—that is to say, if a check came in for the McCormick account it would come to the deposit window for deposit and then be sent to what the Bank called the interior clearing-house department, and there it would be re-routed to the particular department that would send it out for collection; if it was the transit department it would be sent there and if a clearing-house item it would go to the clearing-house department; if it was a check on some outside Bank, say on a Bank in Pennsylvania, the Brookville or the Titusville or the Crawford Trust, it would be routed from the clearing-house department to the transit department and from there be sent for [460—127] collection; that when it was returned to the collection department it was carried as a Cash Item and if it was charged back, it would be charged back as a transit bill by Mr. Horstman, and all these Cash Items get into the collection department as returned checks and were carried there as Cash Items, and that that was true at all times.

The witness then testified that an ordinary cus-

(Testimony of Walter R. Ringsred.)

tomer's account under these circumstances would have the check charged back to him on the one hand, or collection would be made on the other, and that would end the transaction. Whereupon the Court asked the witness whether or not that was the practice of the Bank with the McCormick Lumber Company and the witness answered that it was but that the McCormick Lumber Company seemed to be an unusual account, because if all the checks had been charged back they would have created an overdraft, and if there were no funds there then these checks would be carried as Cash Items in the collection department, and that was the practice of the Bank in connection with the McCormick account. (R., 528.) That in July, 1926, the approximate amount of these checks was \$100,000.00, as a guess, and when the practice was so continuing and they came to the end of a day's business and had a total of these Cash Items, the total would be carried on a general ledger in the Cash Items account, and the items themselves would be placed in the vault; that is, the physical checks would be taken as so much of the Bank's cash and put in the vault and treated as the Bank's cash, and anybody counting the cash or seeing what the cash was in the Bank, would [461—128] have to take these checks into consideration; and when these checks got into the Cash Items on the general ledger and the amount of them was put in the statement for that particular day by Mel Young the bookkeeper, and the checks that were out traveling between Portland and any one

(Testimony of Walter R. Ringsred.)

of the eastern Banks, that amount would be carried in the general ledger in an account called Sundry Banks; that if the Sundry Banks account was looked at from time to time it would disclose a number of checks in total that were drawn on the eastern banks, and that Mel Young kept that book.

When returned checks were placed in Cash Items in cases when they could not be at once charged back to the depositor's account, the Cash Items figure which went into the daily statement books would be the totals of such checks plus other expense items which might appear in the collection cage as Cash Items.

The witness approximated the amount of checks deposited to the credit of the McCormick Lumber Company and returned unpaid, in July, 1926, to be \$100,000. These checks at the end of any one day might have been cleared up the next day but at various times the amount on hand approximated \$100,000. The situation would change from day to day because of the making of new deposits and the return of other unpaid checks.

When deposits of checks drawn on eastern banks were made the McCormick Lumber Company's account was given credit and the amount of the check, when it was send on for collection, would be charged to Sundry Banks. This would be the status of the account during the time the check was traveling [462—129] to Pennsylvania and return.

All of the checks were charged in this way except

(Testimony of Walter R. Ringsred.)

those drawn on Banks which were eastern correspondents of the Northwestern.

Mr. Fraley was auditor of the Bank in 1923, 1924, 1925 and 1926 and up to the time the Bank closed, and made periodical examinations of the various departments of the Bank and he would verify the figures on the general ledger, and had resort to the records that Horstman kept and also to those that Decker kept, and of Mr. Young's records; that Fraley had made audits during the periods of 1923 to 1927. Witness stated that he had seen Mr. Fraley in the collection department in the year 1926, had seen him in Horstman's department and knew that he had examined the cash in 1925 and 1926. That a condition came around the Bank when there were rather large withdrawals, say along early in 1927, indicating that there was concern about the condition of the Bank, immediately after the resignation of Mr. Olmstead about March 1st and continued all during the month of March; that Mr. Skinner had told him to put on more tellers to keep the lines down, possibly near the closing of the Bank; he knew that all the McCormick checks being received for credit were supposed to be O.K.'d [463—129-a] before the McCormick Lumber Company received credit for them, and if Price, Olmstead, Stewart and Skinner were all away, then the checks would go to Bates and he would refuse them unless he had been previously instructed to O. K. them. When they went to Bates he would present them to Mr. Olmstead for O. K. if Olmstead was

(Testimony of Walter R. Ringsred.)

there, and if he was not, either to Stewart or Skinner, (R., 537) and when the witness O. K.'d them, if he ever did, he would have the authority either from Mr. Olmstead or Mr. Skinner, and he would mark Mr. Olmstead's initials with an R underneath them, and if it was Mr. Skinner he would mark "M. S." and "R" underneath. That there was nothing to prevent anybody else in the Bank that was an officer knowing the same things that the witness knew at any time, unless they had instructions not to, and the witness testified that he was not aware of any instructions given at any time, by anybody, that as between the Bank officials themselves the information about these transactions should be suppressed.

On cross-examination this witness then testified as follows:

"(Questions by Mr. HART.)

Mr. Ringsred, I want to get two or three of these transactions accurately defined. The transit department was to handle the collection of items received upon which the depositor had been given credit. That is correct, isn't it?

A. Yes, on checks that were drawn on out-of-town Banks.

Q. As distinguished from items that the Bank had in its possession for collection purposes?

A. Yes.

Q. Now, these items upon which credit had been given would be included in Bills in Transit and Items in Transit, would they not?

(Testimony of Walter R. Ringsred.)

A. No, the account Bills in Transit was handled entirely in the collection department.

Q. Well, Bills in Transit then were items upon which credit had not been given the depositor?

A. No, Bills in Transit was an account of convenience, as a matter of fact; it was to handle checks, [464—130] collection items; ordinary collection items come in given immediate credit on the books. The items that went through Bills in Transit was an account which would enable us to give immediate credit and still handle it through our collection department. We usually charged interest for the time it was outstanding in that account.

Q. That would mean drafts with bills of lading attached?

A. Yes, which we didn't care to have handled through our transit department.

Q. Items in Transit would include checks on out-of-town banks upon which the depositor had been given immediate credit? A. Yes.

Q. And those were handled through the transit department? A. Yes, sir.

Q. They consisted of checks on outside Banks, which the depositor had deposited as so much cash?

A. Yes.

Q. Treated as cash by giving the depositor immediate credit? A. Yes, sir.

Q. Then if any of those checks came back unpaid they would be turned over to the collection department and would be included in the Cash Items?



(Testimony of Walter R. Ringsred.)

A. Not necessarily. Ordinarily they would be charged back to the customer's account immediately, right in the department.

Q. But if there was not sufficient balance in the customer's account, then that charge back would not take place until the customer had made a deposit to bring his balance up high enough?

A. That was true.

Q. And in the meantime, until that was done, then the returned checks would be held in the collection department and classed as Cash Items? A. Yes.

Q. Of course it is possible that in some cases these checks might be sent out immediately and collected, a sum equal to the amount of them collected from the depositor.

A. Yes, in some cases they would communicate with the cashier, or whoever had charge of the account in the office, and sometimes they would instruct us to put the item through again, having apparent information that the check would be paid the next time it was presented. There were exceptions to that, of course.

Q. You would take whatever steps would be most likely to clear the customer's account?

A. Yes, sir.

Q. And if at the close of any day there remained some of these returned checks which had not been taken care of, assuming of course the customer's balance was not big enough to permit the charge of the checks against that, the customer's account would remain in the same condition, and these re-

(Testimony of Walter R. Ringsred.)

turned checks would be carried in the collection cage, as Cash Items?

A. Yes, in many instances checks would be charged back even though it did create an overdraft. (R., 539, 540, 541.) [465—131]

The witness adhered to his view that in the case of the McCormick Lumber Company and in the case of any depositor whose account didn't permit charging the returned checks back, they were carried at the end of the day as Cash Items and were treated as such.

#### TESTIMONY OF JUNE S. JONES, FOR COMPLAINANTS.

JUNE S. JONES testified that the overdraft book was kept on his desk and that he saw Mr. Skinner examine them and that Mr. Olmstead examined them, and that it was in that position all the time he was there in 1925, '26 and '27, and that any officer could look at it; that he knew about the checks in the McCormick Lumber Company account five or six days before it was brought to Mr. Olmstead's attention by the board, when the board took it up with Olmstead, and being pressed by the Court to testify as to just when his was, he stated it was about the middle of February, say about the 14th or 15th, 1927, and that he ran on to it himself, alone, in the collection department; in answer to the Court's question he told what he saw there and that he was looking for Cash Items and picked up the Cash Items himself and asked one of the boys

(Testimony of June S. Jones.)

how they happened to be there. He didn't remember who it was he asked, and inasmuch as checks were being returned and held there as Cash Items he thought it ought to be looked into and receive attention, and he went back and saw Mr. Skinner and THAT PUT HIM IN A VERY DIFFICULT POSITION, BECAUSE HE NATURALLY DIDN'T CARE TO IMPEACH THE INTEGRITY OF THE PERSON WHO HAD O-K'd THE CHECKS, BUT NEVERTHELESS THOSE CHECKS WERE UNPAID, AND HE THOUGHT THEY OUGHT TO BE CALLED TO THE ATTENTION OF SOMEONE IN AUTHORITY, AND HE SUGGESTED TO MR. SKINNER THAT HE GO TO THE COLLECTION DEPARTMENT HIMSELF AND SEE SOME OF THE ITEMS IN THERE THAT HE HAD SEEN. [466—132]

After this witness had so testified, he was then asked what the board did and to this by question and answer he testified:

“A. Why the first thing they did was to discontinue giving credit to such items.

Q. When did they do that, did you say?

A. Well, I can't give you the dates, exactly.

Q. Well, Mr. Price went in there, you know, the first of March. Don't you know that?

A. Yes, it was prior to that time.

Q. Was it prior to Mr. Price becoming president, that they took any action, or was it after?

A. It was prior to that time.

(Testimony of June S. Jones.)

Q. Prior to that time? A. I would say.

Q. Then it was before Olmstead went out?

A. I would say possibly two weeks before that.

Q. Then it was before Olmstead went out?

A. Yes.

Q. What next did you do?

A. I wasn't a member of the board.

Q. Well, you must have a notion about what you have told us, as to what the board did. You ascertained that from somebody. Let's see what else you know.

A. It was self-evident the board had taken action, because we had been notified of the fact that under no circumstances were further items to be taken for deposit.

Q. We had been notified. Who was 'we,' and who gave you those instructions?

A. The other officers of the Bank.

Q. What other officers there?

A. Other junior officers; Longshore, Brown, and Bates.

Q. Who gave you those instructions in February, before Olmstead resigned?

A. I presume—I don't remember definitely; either Mr. Skinner or Mr. Stewart; I presume Mr. Skinner.

Q. That is a presumption. Can you tell me for a fact, which?

A. I would say either of the two, possibly Mr. Skinner.

Q. Did Mr. Price say anything about it?

(Testimony of June S. Jones.)

A. As far as giving orders as to how the account was to be handled, or what we were to do?

Q. That is what I am asking about.

A. He might have, I am not sure.

Q. Do you know whether or not he did?

A. I wouldn't say for sure.

Q. Would you say he did?

A. No; I would say he might have; it is possible he did.

Q. Now, when you looked, as I understand it, in February, in the afternoon at three o'clock, about the middle of February—this was, as I suppose, about the 15th of February?

A. No, I would say it was about four or five or six days before this first meeting of the board.

Q. Now this first meeting of the board that you refer to, was the meeting at which Mr. Olmstead resigned? [467—133]

A. No, no; I take that, as I learned afterwards, to be the meeting at which time he was faced with the proposition, and the matter was discussed with the directors.

Q. The reason that I want to fix the date, Mr. Jones, in your recollection, is this: That I asked Mr. Skinner while he was on the stand, and I only bring it back now so as to see whether your recollection is different than the record shows—I asked Mr. Skinner if there were any meetings of the Board between what is shown here, the 2d and 4th of February, and the 1st of March.

A. Whether or not any meetings?

(Testimony of June S. Jones.)

Q. Yes; and he said there were not, because the record doesn't show any.

A. Well, I am sure I have no knowledge of that at all.

Q. I beg pardon?

A. I have no knowledge of that at all; the records will speak for themselves.

Q. What I am getting at—so both ourselves and the Court are informed—you say was a meeting of the board between February—

COURT.—Formal or informal meeting?

Q. Any kind of a meeting.

COURT.—I suppose they met in conference.

Mr. BRISTOL.—The by-laws provide that whenever the board has a special meeting, and also a regular meeting—

COURT.—I suppose the member of the board might gather at the Bank and discuss informally without making a record?

Mr. BRISTOL.—Yes, they might, and that would not be official.

Mr. HAMPSON.—Would be efficient, but not official.

Mr. BRISTOL.—I don't know whether it would or not.

A. This meeting that I have reference to might possibly be an informal meeting.

Q. When did it take place?

A. I would say in the neighborhood of February 15th.

Mr. HART.—Can't we fix that date by the time

(Testimony of June S. Jones.)

when the crediting of the McCormick Lumber Company's checks stopped?

A. That is the meeting to which I referred.

Mr. HART.—When the McCormick Lumber Company checks were no longer received for immediate credit.

Q. Now, I tried to find out when the directors met. You say a few days one way or the other. What I want to know is the time that you went in this collection department at three o'clock in the afternoon. That is what I am after.

A. If I might be told from the records at what time the action was taken to stop the depositing of the checks, I could better tell you approximately that date, because it was possibly five days previous to that.

Q. There is no record—that is what the Court suggested just now. There is no record when the board stopped payment of any checks, according to the official minutes of the board. I tell you frankly, this does not show in the records.

A. I am not familiar with that.

Q. I am not trying to show anything but what you know. I asked Mr. Skinner whether there were any meetings between February 2d or 4th and March 4th, and he told me there were none; and that is what the record shows. [468—134]

Now, the Court suggests that it was an informal one. That is immaterial to me. I want to know how you fix the time you went into the collection department and got this amount of \$250,000.00.

(Testimony of June S. Jones.)

A. Don't misunderstand me. I just happened to run on to that when I was in there.

Q. All right. What date was it, please?

A. About five days prior to the time that we all had notice that the deposit of checks of the McCormick Lumber Company was to be discontinued.

Q. How long was that before Mr. Price became president? Mr. Price became president, according to the records here, March 1st.

A. Yes, I would say that was approximately from two to three weeks prior to that time.

Q. Olmstead was still president *at time*, then?

A. Yes.

Q. You say that was when Olmstead was in there? A. Yes.

Q. And you looked while Olmstead was still president of the Bank, along then about the 15th of February?

A. I would say a little prior to the 15th of February.

Q. Would it be correct to say about the 10th of February?

A. I would have an idea that would be about the date.

Q. Now then, three o'clock in the afternoon of the 10th of February, you went in the collection department, and found how many of those checks, you say?

A. Oh, I would say there were possibly—

Q. \$250,000?

A. Approximately; that is to say, I added them



(Testimony of June S. Jones.)

roughly in my mind, and I would say possibly \$200,000 to \$250,000.

Q. Now, did that represent the day's business?

A. Oh, I haven't any idea.

Q. Or an accumulation?

A. I haven't any idea; it might represent an accumulation of two or three days.

Q. Might have, you say?

A. I wasn't interested in the accumulation. I was interested in the fact that they were there.

Q. You had never heard of it before?

A. Heard of what?

Q. You had never heard of any such checks being carried in that department, that collection department, before?

A. I had no contact with the collection department.

Q. I say, you had never heard that any such checks had ever been carried in the collection department before?

A. I wouldn't say I hadn't heard; I don't recall that I had.

Q. I understand you to say that the first time that you learned about it was when you went to the collection department yourself. Now, did you hear at any time prior, and if so when, that checks were being O.K.'d by Ohmstead, or anybody else in that collection department, and carried as Cash Items?

A. I might have heard of it, I can't say; I had no contact with the collection department. [469—135]

(Testimony of June S. Jones.)

Q. I didn't ask you that. Mr. Hart having accused me of having tried to trap you, I want to be fair with you. We have some testimony here, at least I think it is testimony, that certain things were generally known. I am trying to find out whether you had any notice or knowledge of it. Now, if you can tell me when you first heard it, whether or not by instructions of anybody, or orders of anyone, or O.K. of anyone, that any McCormick checks were carried in that bank, I want to know when you first heard it?

COURT.—What kind of checks? You mean out-of-town checks that came back unpaid?

Q. Well, checks charged to Sundry Banks, checks treated as Cash Items, or checks carried in Bills in Transit, of the McCormick Lumber Company.

A. Why I probably had less contact with that than any other officer in the bank, because it was out of my work and out of my line.

COURT.—I presume counsel wants to know whether you ever heard that McCormick checks were coming back unpaid?

A. I had heard at different times that Wheeler checks, as we called them in considering all these accounts, had been returned, but Mr. Olmstead handled that account, and I paid no particular attention to it at all.

Q. Everybody left it to Olmstead?

A. Who do you mean by everybody?

Mr. HAMPSON.—Who do you mean everybody?

(Testimony of June S. Jones.)

Q. I mean everybody, the directors, and officers, in this case; and everybody in the Bank.

COURT.—That is a broad question; that is assuming a great deal.

Mr. BRISTOL.—I want to assume it, and see what the witness says.

COURT.—He didn't say anything of the kind, and you ought not to assume that in this case, because that is assuming the very gist of this case.

Mr. BRISTOL.—I say this, to make it clear;—

COURT.—Make it clear by making your question definite and certain, but not include in that kind of a question all the parties in this suit. That is the very gist of this case.

Mr. BRISTOL.—I asked the witness to particularly specify when he first heard it, and I haven't got an answer yet.

COURT.—That was not your question, I beg your pardon.

A. I couldn't say.

Q. You couldn't say when you heard it, but you know you did hear it?

A. The Wheeler checks being returned?

Q. What?

A. The Wheeler checks being returned to the Bank, yes.

Q. That is McCormick, the whole business, that is the McCormick and everything else, was generally referred to in the Bank as the Wheeler transaction, wasn't it? A. Yes.

Q. Now, I say again, do you tell me the fact is

(Testimony of June S. Jones.)

that Olmstead exclusively handled this Wheeler line, nobody else?

A. Why, in the latter years of the Bank I know of no one that had any contact with the Wheeler account at all, but Olmstead. [470—136]

Q. That isn't what I asked. Did you ever talk to the board yourself about any of these matters, or any member of the board? A. No.

Q. Did you talk to your junior officers about it?

A. About what?

Q. The Wheeler line, during the years 1924, '25, '26 or '27. If so, when?

A. I might have, I wouldn't say I had not.

Q. Did any junior officer ever talk to you in 1926?

A. He might have; I wouldn't say he did.

Q. Do you recall whether he did or not?

A. No.

Q. Didn't you see Mr. Bates several times, and didn't Mr. Bates see you and discuss with you the question of the Wheeler line, and how they were being handled?

COURT.—The Wheeler lines?

Q. Yes, the Wheeler lines; and as to what was going to be done about it?

COURT.—The Wheeler lines; that is very broad.

Mr. BRISTOL.—He has told me this very matter was known as the Wheeler matter in the Bank.

Mr. HAMPSON.—The whole examination is improper; he is cross-examining his own witness.

A. I would say, Mr. Bristol, Mr. Bates would

(Testimony of June S. Jones.)

be the last one at the bank to discuss the Wheeler lines, because he had nothing to do with the credit department, had nothing to do with the loans of the bank, and in fact didn't make any loans; so I am reasonably sure that I never discussed the Wheeler lines with Bates.

Q. And am I to understand that Mr. Bates had nothing to do with the McCormick checks?

COURT.—He didn't say that.

A. I didn't say checks. You asked me about the Wheeler lines. The Wheeler lines were handled by Mr. Olmstead, and as I say, Mr. Bates had nothing to do with the investments of the bank, or the loans of the bank.

Q. Now, we have it, if that is the case. Now then, did Mr. Bates ever discuss with you the McCormick checks that were coming back and treated as Cash Items?

A. He might have; if he did it was only casual remarks, because neither he nor myself had any authority to do anything, and if it was —

Q. That being your answer to that, did you ever see Mr. Bates in July, or June, with a list of these unpaid Wheeler checks, or McCormick checks, or checks treated as Cash Items, under the McCormick name, or the Wheeler name?

A. I did not,—I believe not.

Q. Did you ever discuss it with Mr. Skinner, or he with you, except at the time you say in February?

(Testimony of June S. Jones.)

A. Do I understand you to mean checks of the McCormick Lumber Company?

Q. Yes.

A. Mr. Skinner never discussed it with me.

Q. Nor Mr. Stewart?

A. Nor I with him. (R., 556, 557, 558, 559, 560, 561, 562, 563, 564, 565.) [471—137]

The witness then testified that he knew of the Wheeler lines of credit in the Bank, and he felt his guarantee represented some additional strength to the loans; and he then testified that at the time he told Mr. Skinner that Olmstead wasn't there, that it was after three o'clock in the afternoon, and he was asked whether or not he had mentioned the matter to Olmstead the next morning and he said he had. Thereupon he was asked this question and gave the following answers:

“Q. Was there any reason there, Mr. Jones, that you know of, that indicated that Mr. Olmstead was doing something that nobody else knew anything about?

A. Well, I was—I was surprised to find a number of checks in these accounts, in the Cash Items unpaid, and naturally felt that it should be called to the attention of somebody in the bank with authority; and that was the reason for my action that afternoon.

Q. But your occasion for going there at that time, was on account of the inquiry for warrants from another bank?

A. I happened to run across them.

(Testimony of June S. Jones.)

Q. You happened to run across them?

A. I happened to run across them, yes, when I went in.

Q. Now, the natural thing, if Olmstead had it in charge, was to take it up with Olmstead. You say he wasn't there. He came back the next day after you told Skinner?

A. Why, I presume he was there.

Q. Did you say anything to Olmstead then?

A. No, I didn't say anything.

Q. Did you ever discuss it with Mr. Olmstead?

A. I don't believe I ever did.

Q. Did you ever discuss it with Mr. Stewart?

A. Not prior to that time, I don't believe. I had discussed the Wheeler lines of credit.

Q. Yes, I don't mean that. I mean these Cash Item checks? A. No.

Q. And outside of that one conversation now, with Mr. Skinner, you didn't discuss it again with anybody?

A. I told no—not until after many days after that.

Q. Quite a while after. Down near when the Bank closed some time?

A. No, possibly seven or eight days; a week, or something of that kind.

Q. Who did you talk to at that time?

A. Oh, we were all discussing it then.

Q. What was done about it? [472—138]

A. What was done about what?

(Testimony of June S. Jones.)

Q. About these checks. Did you find out there were any more then?

A. When they all came back there were more of than that number, of course, and they totalled somewhere near \$800,000.00.

Q. What was done with them?

COURT.—Done with what, these checks?

A. The checks? Nothing was done with the checks.

Q. What is that?

A. Nothing; I don't remember anything was done with the checks.

Q. You don't know that anything was done with them at all?

A. No; the checks were unpaid; remained as assets of the bank; I believe still are.

Q. And remain so, as far as you know?

A. I believe so, yes.

Q. And that continued on down until you left the Bank?

COURT.—And what continued?

Q. Checks left in the same condition.

COURT.—Remained unpaid.

Q. As when they were made.

A. When I left the bank after liquidation, yes, as far as I know." (R., 571, 572, 573.)

The witness then testified that in the latter part of February, 1927, Mr. Price told him that he was to accompany Mr. Skinner and Mr. Stewart in connection with the proposition that the Bank would be sold, or would be offered to the First National



(Testimony of June S. Jones.)

Bank of Portland, Oregon; that he went to the banking quarters of the First National Bank and met a committee of officials consisting of C. F. Adams, Elliott Corbett, W. L. Thompson and Mr. E. A. Wyld; that the reason he was sent down there was that he was familiar with the credit of the Northwestern National Bank; and that either Mr. Price or Mr. Skinner told him what he was to do and they told him to go down to the First National and discuss the assets of the Bank the paper in the Bank, and the various investments the Bank owned. Thereupon the witness was asked what the reason was that led up to this negotiation and if he knew what the reason was, and he testified by question and answer as follows: [473—139]

“Q. There must have been some reason that led up to this. Do you know what the reason was?

A. Reason?

Q. That led up to this offer of you going down there to the First National Bank? A. Yes.

Q. What was it about?

A. The reason was these \$800,000. of unpaid checks of Wheeler we had.

Q. That was the reason?

A. That was the reason.

Q. That you wanted to sell out, you mean?

A. Well, that would appear to be quite sufficient reason.

Q. And you disclosed the fact to the First National Bank, didn't you? That is, to Adams, Corbett, Thompson and Wyld?

(Testimony of June S. Jones.)

A. I don't know that that was discussed."  
(577, 578.)

Witness was then asked if he wanted to leave the impression with the Court that the Northwestern National Bank, on the day he discussed with Messrs. Corbett, Thompson, Adams and Wyld, was a concern of the value of twenty million dollars and he answered, "Twenty million dollars resources."  
(579.)

Upon resuming direct examination (R., 584) this witness testified that he was one of the trustees of the Dufur Orchards Company or Durfur Fruit and Farm Company, that he was an appointee of the Bank; that all negotiations with the First National Bank took place before Mr. Price became president, that Mr. Olmstead's resignation followed and Mr. Price succeeded him as president of the Bank. He then testified that it was his understanding that the Bank would continue under Mr. Price's direction of the board of directors—with the plan of subsequent assessment. When questioned, he said he meant "the plan in connection with the reorganization of the Bank," then disclosing that he had spent four or five days with the Examiner at the time the examination was made about March 5, 1927, going over the assets of the Bank and revaluing them with the Examiner; that at that time [474—140] the unpaid McCormick checks had gotten up to something slightly less than \$800,000.00 and were still carried as Cash Items when the

(Testimony of George W. Hoyt.)

examination was made on March 5th; that that was his recollection.

TESTIMONY OF MISS LOUISE STEUER,  
FOR COMPLAINANTS.

MISS LOUISE STEUER testified that the Examining Committee's report which was heretofore introduced in this record, dated December 7, 1926, was written by her from memoranda given her by Mr. Olmstead, (592) and she was certain that Olmstead gave her the memo. for that purpose. (598.)

TESTIMONY OF GEORGE W. HOYT, FOR  
COMPLAINANTS.

GEORGE W. HOYT testified that he began his career as a banker in 1892, that he came with the Northwestern National Bank in 1915 and was assistant cashier there from 1923 to 1927 inclusive. That in July, 1926, Mr. Decker called his attention to some Cash Items or Wheeler drafts amounting to about \$81,000.00 and to McCormick Lumber Co. checks of approximately \$182,000.00. That on August 30, 1926, he found the situation to be a total of \$218,770.00 from McCormick checks carried as Cash Items and that there were cash items of the same magnitude or amounts at odd times; that when he first heard of this matter, in July, 1926, he reported it to Charles A. Stewart, reporting to him the exact items he had given in the record.

That after he had spoken to Mr. Skinner and Mr. Stewart about it, about the 10th of February,

(Testimony of George W. Hoyt.)

1927, he didn't pay any more attention to it but Skinner told him that the matter had been called to the attention of the board of directors and that it was in their hands. That Brown, Bates, Ringsred and Fraley knew the situation as he did. (609.) [475—141]

On cross-examination (614) the Court then asked the witness the following questions and he gave the following answers:

“COURT.—Mr. Hoyt, did you get your information from the daily statement, or from the items themselves?

A. I got it from the items themselves, in the collection cage.

COURT.—I wondered if you got from the daily statement, carried over from the daily statement, or whether you found the items themselves?

A. No, I found the items.

COURT.—You don't know whether they were taken care of during the day or not?

A. No, I couldn't say as to that.” (R., 616.)

#### TESTIMONY OF FRANK O. BATES, FOR COMPLAINANT.

FRANK O. BATES, the cashier, was then called as a witness, and testified that the loaning officers of the Bank were Messrs. Olmstead, Price, Skinner, Stewart, Longshore and Jones. That in 1926 he knew of the account commencing March 29, 1926, of the McCormick Lumber Company and that his

(Testimony of Frank O. Bates.)

attention was called to the overdrafts and "Cash Items" checks as testified to by the other witness, and that he gave the information he obtained to Olmstead in 1926 and later in the fall and talked it over with Hoyt, Skinner and Stewart and with O. L. Price (626) and in the early part of 1927, and that the items were large enough to call them to their particular attention; that anyone could have ascertained from the statement book or from the daily overdraft book the exact amount of the Cash Items that were going through; that about March 1st, 1927, some seven hundred thousand odd dollars of these Cash Items were charged up against Claims and Judgments, and the general books disclosed the facts; that the first thing that is done in the morning when a Bank is opened is to count the cash and to consult the daily statement and see what the condition was, and during the period of these transactions which are under discussion the checks in the collection department would be a part of the general cash in the Bank. (636) [476—142]

TESTIMONY OF WALTER H. BROWN, FOR  
COMPLAINANTS.

WALTER H. BROWN testified that any out-of-town items, in the practice of the Bank, which were for immediate credit would have to be O. K'd. by some officer of the Bank, whether it was Wheeler's account or anybody else's or the McCormick Lumber Company's account, and that if Olmstead was not there, the matter would be referred to the other

(Testimony of Walter H. Brown.)

senior officers, Skinner, Stewart or Price or whoever might be available. (644-45.) That the daily statement book of the Bank was kept on his desk, and it was there every day; as it was his custom and usage to have it on his desk every morning; and it was generally understood and discussed that there were times when there were large items in the Cash Items which were being carried, among officers like Mr. Bates, Mr. Hoyt and himself. In answer to the Court's question that the amount of Cash Items were finally credited to Claims and Judgments, witness said he knew that that was done but he did not know who gave the instruction that this be done, but he testified that the stockholders of the Bank made up a fund to take care of the checks, and that the records of the Bank ought to show what was done with that fund.

#### TESTIMONY OF MEL YOUNG, FOR COMPLAINANTS.

MEL YOUNG testified that he was the bookkeeper who kept the general books from 1915 on, and he identified the daily statement referred to by the witnesses and testified that it was rendered at the close of business each night; that it was kept by him; that the Northwestern National Bank was a member of the Federal Reserve System; that Cash Items were entered daily on the statement as handed to him, after they came to him from the interior department of the [477-143] Bank and that he got his Bills in Transit from the collection

(Testimony of Mel Young.)

department and the Sundry Banks items from the transit department; that he entered the actual transactions accordingly and then he delivered the statement book down in the officers quarters the next morning and it would remain there until closing time, then he would go after it and get it.

The witness was then asked to take the statement book showing the Bank's condition as of June 30, 1926, and by question and answer to give from the record the dates and items which appeared under the respective headings "Sundry Banks," "Bills in Transit," and "Cash Items" on each respective date to which the question related, and the same were as follows:

Date.	Sundry Banks.	Bills in Transit.	Cash Items.
y 6 1926	1,137,924.74	69,706.14	15,502.90
ne 30 1926	1,631,667.90		
ly 1 1926	1,634,250.43		
ly 9 1926	1,615,220.85		
ly 12 1926	1,504,016.29	63,036.25	238,510.97
ly 13 1926	1,667,339.00		
y 22 1926	1,640,820.29	38,527.05	37,378.44
y 23 1926			207,423.93
g. 14 1926	1,698,734.59		
g. 17 1926	1,740,177.86		
g. 20 1926	1,631,294.83		
g. 27 1926			24,765.86
g. 28 1926			41,244.74
g. 30 1926			254,825.49
t. 4 1926	1,621,962.96		
t. 8 1926	1,850,563.33		

Date.	Sundry Banks.	Bills in Transit.	Cash Items.
Sept. 14 1926	2,028,985.50		
Sept. 15 1926	2,062,964.15		
Sept. 21 1926	1,601,557.86	49,233.49	72,261.42
Sept. 24 1926	1,626,651.99		
Oct. 5 1926	1,693,071.04		
Oct. 9 1926	1,730,510.61		
Oct. 12 1926	1,694,888.64		
Oct. 14 1926	1,774,949.82		
Oct. 15 1926	2,014,279.50		
Oct. 16 1926	2,020,186.89		
Oct. 20 1926	1,667,623.43		
Oct. 22 1926	1,807,682.04	67,568.03	
Oct. 23 1926	1,980,499.69		
Oct. 26 1926		143,367.34	
Oct. 30 1926	1,745,595.03	223,505.49	
[478—144]			
Nov. 1 1926		226,794.95	
Nov. 4 1926	1,814,350.01		
Nov. 9 1926	1,916,766.71		84,627.99
Nov. 10 1926			499,967.97
Nov. 13 1926			215,204.22
Nov. 15 1926	1,986,967.53		155,485.55
Nov. 16 1926	1,953,506.21	58,601.55	159,103.36
Nov. 19 1926	1,833,084.44	53,097.16	20,731.44
Dec. 7 1926	1,713,930.38	84,664.89	105,699.89
Dec. 10 1926	1,607,534.06		
Dec. 30 1926	1,582,746.24	99,761.06	117,811.14
Jan. 3 1927, Clo.	1,572,115.31	cl. 104,567.97	



(Testimony of Mel Young.)

Date.	Sundry Banks.	Bills in Transit.	Cash Items.
Jan. 3 1927	Beg. 1,749,833.84	beg. 102,660.33	
Jan. 6 1927	1,622,160.48	155,712.50	
Jan. 15 1927	1,715,213.93		
Jan. 17 1927	1,717,983.20	106,285.54	
Feb. 5 1927		176,443.64	
Feb. 11 1927	1,608,939.52	98,248.64	169,132.16
Feb. 15 1927			780,751.94
Feb. 16 1927			794,935.06
Feb. 19 1927			818,797.17
Feb. 25 1927			823,350.76
Feb. 28 1927			823,877.45
Mch. 1 1927			68,002.83

Thereupon, upon question and answer the witness testified as follows:

“Q. Now I call your attention to that last entry, (665) apparently February 28th, in the daily statement book, and which carries the amount you read, \$823,877.45 Cash Items. Is that right?

A. That is right, according to this here.

Q. Now, on March 1, 1927, your Cash Items were what? A. \$68,002.83.

Q. Now between February 28th and March 1st—that would be the next business day, wouldn't it?

A. Next.

Q. Now here is \$823,877.45—so you understand what I mean; the very next day there is \$68,002.83. Can you tell me what became—this would be the close of business February 28th? A. Yes.

(Testimony of Mel Young.)

Q. And this would be the close of business March 1st? A. Yes.

Q. Wouldn't that be true? A. Yes.

Q. What became, if you can tell me, if you know, of the difference between the \$68,000 on March 1st, of Cash Items, and the \$823,000 of February 28th?

A. You will have to ask somebody else besides me, I can't tell you, I don't know; I do not.

Q. Were you keeping the books on February 28th and March 1st? A. Yes." (R., 665, 666.)

[479—145]

\* \* \* \* \*

"Q. I notice that the item there, Bonds, Stocks and Securities, as shown by the record of February 28th, is what? A. \$1,242,522.36." (R., 666.)

\* \* \* \* \*

"Q. Now you show me March 2nd that Other Bonds, Stocks and Securities on the daily statement book are what, by the record?

A. Are \$2,039,284.36." (R., 668.)

\* \* \* \* \*

"Q. Now the difference that you find upon your record, as you see it is \$796,762.00, is it? A. Yes.

Q. Between the date of February 28th and March 2nd? A. Yes.

Q. That is right, on your daily statement book?

A. That is correct." (R., 669.)

\* \* \* \* \*

"Q. Now, on March 23, 1927, what did this daily statement book show with respect to the amount of your Capital, Surplus and Undivided Profits,

(Testimony of Mel Young.)

giving the amounts separately, if you please. The amount of your Capital, we will understand, so as not to read it every time, was \$2,000,000. At that date would it be the same? A. Yes, \$2,000,000.

Q. And what was your Surplus in there, as on March 23, 1927? A. Surplus \$400,000.

Q. And what was your undivided profits in there?

A. Well, there was—I want to segregate some here.

Q. Well, I say what is the entry there?

A. You don't understand me, I guess.

Q. Understand what?

A. On that undivided profits.

Q. I asked you what does it show here on that date. A. It shows there \$30,026.82.

Q. That is what I want to get at first. Will you please take January 4, 1927.

A. Yes.

Q. The capital was the same, was it not, \$2,000,000? A. The same.

Q. Surplus \$400,000? A. Yes, sir.

Q. And the entry of undivided profits there is how much? A. Entry \$30,026.82.

Q. The same as before?

A. Yes, sir." (R., 671, 672.)

\* \* \* \* \*

“Q. Now while you have the 1926 book there, look at July 6, 1926, will you please. What is the undivided profit? A. \$90,202.43.

Q. Now, look at April 16, 1926. What does your

(Testimony of Mel Young.)

report show about Undivided Profits as of that date, together with your Capital?

A. Capital \$2,000,000, Surplus \$400,000, Undivided Profits \$7,393.70." (R., 672, 673.) [480—146]

The witness then testified as follows:

"Q. In other words, that is what you did, and computed it so the officers would understand that you did? A. Certainly.

Q. And the net set out here?

A. Net is set out here.

Q. The net is set out below as net profits in figures, so the officers can see it?

A. So can see just what the net profits are.

Q. From day to day? A. From day to day.

Q. You mean by that, without regard to any imputation of your entry—that is not the point I am after, so the Court and Mr. Hart understands—but the real situation in the bank was to give the officers intimate information of what they were doing, and how they were doing it; that was the object of this statement, was it not? A. Certainly.

Q. And you made it up every day, as I understand it, for that purpose? A. Yes, sir.

Q. Now during all the time you were there was the same system that you have exhibited here this morning, carried on?

A. It was." (R., 674 to top 675.)

Upon recross-examination by Mr. HART, this witness testified and the Court and counsel asked the following questions and made the following statements:

(Testimony of Mel Young.)

“Q. Mr. HART.—I would like to put in also those figures at the time the Bank Examiner examined, if I can get the page. Will you read in the record the Cash Items shown on the statement of September 21, 1926?

A. What do you want, the Cash Items?

Q. Yes. A. \$72,261.42.

Q. And Sundry Banks?

A. Sundry Banks \$1,601,557.86.

Q. And Bills in Transit?

A. Bills in Transit \$49,233.49.

COURT.—I don't recall, but did the Examining Committee's report show the examination of the bank as of a certain date?

A. It shows, your Honor, that they examined the Cash on a certain date. Their examination extends perhaps over a week or more.

COURT.—It isn't as of a certain date?

Mr. HAMPSON.—Yes, as of a certain date in every instance.

COURT.—So the Examining Committee report would not indicate the date they examined it?

Mr. HAMPSON.—Not the day the report was dated, no.

Mr. LOGAN.—For instance, the report dated December 7th was not considered until some time in February, and it refers to a date in November as the examining date.

COURT.—That is what I was asking about.

(Testimony of Mel Young.)

Mr. BRISTOL.—So your Honor understands, take for instance May 18, 1926.

Mr. LOGAN.—Turn to the one of December 7th, if you will.

Mr. BRISTOL.—Now, May 18th, page 422, is the record of May 18, 1926. It is report to the Board, and the opening statement reads as follows: ‘We, your Examining Committee, appointed at the annual meeting, beg leave to report that on May 6, 1926, we started a full and complete examination of the affairs, of this bank, which was completed May 18, 1926.’ That would be the date between May 6th and May 18th, twelve days. Now take the one that the young lady identified, just before that. December 23, 1925. The record, page 418, is as follows: ‘We, your Examining Committee, appointed at the annual meeting, beg leave to report that from December 3rd to December 22nd, we made a full and careful examination of the affairs of this bank, as of this date.’

Mr. HART.—‘As of this date.’

Mr. BRISTOL.—As of this date, from December 3d to December 22d.

Mr. HART.—That is all in the record. The first thing they did was to count the cash, and get these items. That is the practice they followed for every examination.

Mr. BRISTOL.—Mr. Logan asked me to turn to page 434, December 7, 1926, and that one has this phraseology: ‘We, your Examining Committee, appointed at the annual meeting, beg leave to report

(Testimony of Mel Young.)

that on November 19th to December 1st we made a full and careful examination of the affairs of this bank, as of date.' And the date is December 7, 1926. That is the one that came before the directors' meeting, according to the record, February 6, 1927." (678-79-80.) [482-148]

TESTIMONY OF — FRALEY, FOR COMPLAINANTS.

FRALEY testified that he was cashier of the Bank, had been so for several years, had performed the duties of auditor, confirmed the description of cash items and bills in transit as the other witnesses had; that on February 28, 1927, in the Daily Statement Book there were cash items of \$823,877.45 and that he got instructions from Mark Skinner to make up certain entries in respect of that item; that on March 1, 1927, the entry remained the same but on March 2d it was changed; that the Examining Committee, Messrs. Metschan, Charlton and Skinner had started their examination at the close of business November 19, 1926, and he had a statement in his pocket showing what that examination was to cover; that the witness had written it up as he always had done and it was usual for him to give that direction every semi-annual examination, and it read as follows:

“Mr. BRISTOL.—Bank Directors' Examination. Assets and liabilities to be examined and state-

(Testimony of — Fraley.)

ments to be furnished by auditing department. All cash to be audited by auditing department, for the directors, and with their assistance when possible. Bank securities examined and audited from statement of securities as shown by general ledger and security record. Then the words 'Other real estate owned' is that your writing?

A. Yes, sir.

Q. 'Loans and discounts checked and examined from list furnished by note department and from liability ledger sheets themselves. Cash items examined and checked to general ledger from list furnished by auditing department, along with Cash Recapitulation.'

COURT.—You can read it right along; we will assume you read it right.

Q. 'Verification letters sent to all C. H.—'

A. Clearing-house banks.

Q. 'Return letters given to directors with copy of settling statement. Examination of outstanding cashier checks, certified checks, time C/Ds, Demand C/Ds and Bills in Transit, checked from lists made up by auditing department. Expense and interest paid, condensed statement. Assets non-income producing, statement. Loans and discounts on which interest is not paid. Expense book and stock register examined by directors.' And then in writing 'list of [483—149] overdrafts.' That is your writing?

A. My writing.'" (R., 695, 696.)

And the paper that he prepared as auditor as



(Testimony of — Fraley.)

above quoted was for the guidance of the Examining Committee at that time and, according to his suggestion, the Committee was required to go and look into the Cash Items, and that they did it and they had done so under his suggestion but he was not positive whether they did it November 19, 1926; and that on November 19, 1926, he gave them a list of the Cash Items, and the same was introduced as Complainant's Exhibit 29.

The witness then produced three papers, consisting of two credit memorandums and one debit memorandum dated March 1, 1927, of the Northwestern National Bank and described them as follows:

“Q. The first item is credit stockholders assessment account, March 1, 1927, F. F. Pittock \$17,500; Phil Metschan \$10,000; E. S. Collins \$76,000; O. L. Price special \$7500; O. L. Price \$29,000; Pittock Estate \$769,600; Charles K. Spaulding \$20,000; and paid and carried out as \$929,600. And initialled ‘F,’ that is your initial?

A. That is my initial.

Q. And upon that same date, and as part of the same transaction, the next slip was Credit, Profit & Loss account, transferred from Stockholders Assessment Account to take care of charge-offs, \$929,600, initial debt. Is that right?

A. That is right.

Q. Now, then, the corresponding entry, or the next part of the transaction is shown by debit slip. Is that right? A. Yes.

(Testimony of — Fraley.)

Q. As follows: Debit, Stockholders Assessment account, March 1, 1927, F. F. Pittock, \$17,500; Phil Metschan \$10,000; E. S. Collins \$76,000; O. L. Price Special \$7500; O. L. Price \$29,000; Pittock Estate \$769,600; Charles K. Spaulding \$20,000.

A. That is right.

Q. Now, the next in order.

A. They come in this way.

Q. Then the next in order gives a credit to profit & Loss March 2, 1927, charge-off 3/1/37, account McCormick Lumber Company and J. E. Wheeler items, should have gone to Other Bonds, Stocks, Securities, etc. \$796,762. Opposite that is written 'Claims' and initialed 'F.' [484—150]

A. That is right.

Q. There seems to be a lead pencil notation on that. What is that?

A. Mr. Skinner's initial.

Q. On March 2, 1927, debit 'Other Bonds, Stocks, Securities, etc.' McCormick Lumber Company and J. E. Wheeler Cash Items (see over for list) \$796,762, Claims Accounts, and some initials.

A. That is right.

Q. Likewise initialled by Mr. Skinner in lead pencil? A. Same initial, yes.

Q. And on the back of this are written the items that are referred to on the front of it?

A. That is right.

Q. Showing how the total of \$796,762 was made up? A. That is right.

Q. And is that your writing, or somebody else's?

(Testimony of — Fraley.)

A. My writing." (R., 704, 705.)

The witness then read the items referring to the McCormick Lumber Company aggregating \$92,-687.00; then the items similarly referring to McCormick Lumber Company in the Forrest County National Bank, Tionesta, Pennsylvania, \$91,000.00, similar checks on Brookville Title & Trust Company, Brookville, Pennsylvania, aggregating \$534,-475.00, and similar checks on Titusville Trust Company, Titusville, Pennsylvania, aggregating \$75,-000.00. Then the witness testified by question and answer,

“Q. The third group that relates to the ones we first read comprises total sum of \$929,600, denotes somewhat of a corrective entry, does it not?

A. The first item of \$7500 is correcting entry showing refund to Mr. Price for over-payment on stockholders assessment.

Q. And the second one?

A. The second represents the transfer of stockholders payments on that, in Profit & Loss Account, to Cashier's Checks, which was transferred or given to Mr. Skinner, to be held by him as trustee for the stockholders.

Q. The first paper explains, March 21, 1927, debit Profit & Loss Account, O. L. Price, 3/1, over-payment on stockholders assessment recorded to his account \$7,500, initialled by yourself and Mr. Skinner? A. That is right.

Q. In connection with that March 2, 1927, debit Profit & Loss Account entry of 3/1/27, stockholders

(Testimony of — Fraley.)

payment to guaranty fund, entered as stockholders assessment in error, held in 'CC' meaning Cashiers Checks. A. That is right.

Q. No. 172137, and so you will understand, Mr. Hart, Cashier's Check is No. 172167.

A. I can explain that. [485—151]

Q. I don't care. Less O. L. Price over-payment refund \$7,500, and then a deduction from \$929,600, that I read in. And the first group of papers should be March 1st, to which this entry refers, showing debit on that slip of \$922,100?

A. That is right.

Q. And then you say a Cashier's Check was made out. That is also initialled by you and Mr. Skinner? A. Yes.

Q. Now the Cashier's Check referred to, that was given to Mr. Skinner, 172167 on March 2, 1927, \$922,100 and signed by Mr. Hoyt and Mr. Skinner is still holding it? A. Yes.

Q. As trustee for whom, you say?

A. For the stockholders who had paid in on this assessment.

Q. And is the subject of that entry?

A. Yes.

Q. And that is the way—your mind is sufficiently directed to this entry so you know what I am talking about—the way that this was taken care of, as I asked you this morning? A. Yes.

Q. And as auditor did you know—and to be certain if you did I will show you the book as of November 19, 1926, what the amount of Sundry

(Testimony of — Fraley.)

Bank items was on that date, as shown on the daily statement of the bank.

Mr. MAGUIRE.—That is all in evidence.

Mr. BRISTOL.—I am asking if he knows.

Q. Did you know of that item? A. I did.

Q. And at the time it was entered there?

A. Yes.

Q. And at that time it was what, as shown?

A. The amount was \$1,833,084.44.

Q. And at that time your Cash Items was also known to you, was it? A. It was.

Q. How much?

A. \$20,731.44." (R., 706, 707, 708.)

Q. Can you tell me why, with respect to these papers you produced about this entry, that Mr. Skinner had to O.K. them, why he put his initials on them.

A. Because he authorized me to make the entries." (715.)

The witness then identified the statement of the close of business September 15, 1922, as published, and the witness said he prepared it as he had prepared others, and copies of these statements were substituted and offered in evidence commencing with Complainant's Exhibit 30, which was the statement published March 28, 1927.

The witness then testified that he had instructions to refer the Cash Items to Olmstead, and [486—152] that when Hoyt and the other witnesses who had testified about the list of checks had called his attention to that he took the matter up with

(Testimony of — Fraley.)

Bates and Olmstead, that he had knowledge of the situation on the 30th of August, 1926, as auditor and that Cash Items of McCormick Lumber Company were being returned, that he supervised Mel Young, the bookkeeper, that he made out a list of the checks for Mr. Olmstead, that he made a report to him several times in 1926 of these checks, but he thought that Mr. Bates had his own list; that any officer and/or director had access to the books just the same as he did, and if they wished to investigate the records they could have ascertained, and knew in July, 1926, just what he knew. The reports of the Examining Committee were turned over to Mr. Skinner; that all the checks for the Brookville Title and Trust Company, Forrest County National Bank and Titusville Trust Company were O. K.'d by Mr. Olmstead but if any checks were drawn for less than \$1,000 they would not have to be O. K.'d; that he didn't have any instructions in 1924 from the Executive Board when the board condemned the Wheeler transactions; that he left Mr. Bates to inform Mr. Stewart and Mr. Skinner; that there was nothing to prevent him informing directors and other officers of the Bank if he had wished to; that in 1926 he heard of a plan to organize a "Take-over" company to get the affairs of the Bank in a different condition. That this was about the time of the Harris report of the 21st of September, 1926, that rumors about the strength of the Bank had commenced before that time (732) and he communicated these rumors to Price and

(Testimony of — Fraley.)

Skinner; and when the Examining Committee on November 19, 1926, started their [487—153] examination they would have to take into consideration Sundry Bank Items \$1,833,084.44 and the Sundry Bank Items appeared on the Daily Statement Sheet from time to time; that anybody could have gone to Phil Horstman on any day and found out the Items in Transit, and that this could be checked up with each daily balance, and the same thing would be true of Cash Items. An inquiry could have been made of Mr. Decker.

On cross-examination by Mr. Hart this witness testified,

“Mr. Fraley, directing your attention for a moment to the entries made as of March 1, 1927, as I understand it you made those entries and the purpose of it was to remove the float items entirely from the assets of the bank? A. I did.

Q. You charged the total float to Profit & Loss, and you made corresponding charges which were intended to take advantage of the money deposited by the stockholders? A. That is right.

Q. And then, as I understand it, the Federal Bank Examiner, Mr. Crowley, objected, pointing to the fact that these unpaid checks should be carried somewhere as an asset of the Bank?

A. That is correct.

Q. And you thereupon reversed your entries so as to charge the total of this float to Claims Adjustment? A. That is right.

(Testimony of — Fraley.)

Q. And you relieved the Profit & Loss Account of former entries? A. I did.

Q. Did you make the entries you first described by your own initiative, or was that directed by someone?

A. That was directed by Mr. Skinner." (R., 741, 742.)

Thereupon there was offered in evidence statements given to the Comptroller of the Currency commencing with the date December 29, 1922, with Exhibit 32 and continuing cronologically through the successive years at six months' periods to and inclusive of Complainant's Exhibit 49.

#### TESTIMONY OF EMERY OLMSTEAD, FOR COMPLAINANTS.

EMERY OLMSTEAD testified that he had remained an officer and director of the Bank and its [488—154] president up to March 1, 1927; that in 1923 Price talked to him about the sale of the stock to the United States National Bank and that Price, Ainsworth and himself had a conference and discussed the consolidation or liquidation of the Northwestern National Bank and turning over the business to the United States National, and the question was about the building and the deal fell through. This was in March, 1923. There was a disposition on the part of the Pittock trustees to sell the stock of the Northwestern National Bank; that the Pittock Estate practically



(Testimony of Emery Olmstead.)

controlled the Bank (842-A); that the bank building cost the Bank \$1,690,000 and they marked it on the books at \$1,200,000 and \$490,000 went into the undivided Profit Account through an appreciation writing up the property, and that just before he resigned as president, March 1, 1927, O. L. Price was negotiating with the United States National Bank again for the disposition of the Northwestern National Bank; that some time in 1925 Price and Morden wanted to sell the stock of the Pittock Estate for \$135.00 a share in the Bank; that the reason for writing the \$490,000 up was that then they secure funds to take some of the frozen assets out of the Bank and they were justified in writing the building up because of that affair, and it was really done to help the Pittock Estate and to help take care of the frozen assets of the bank by trying to get rid of an \$800,000 mortgage against the building (852); all Examiner's reports were discussed with the board of directors, usually by the Examiner himself; that they finally found themselves in 1925 or about 1926 with over \$1,500,000 worth of frozen assets, and it was decided [489—155] to organize a corporation and take this stuff out of the Bank. This had been proposed by Mr. Wylde in 1925 but Mr. Price objected to it. The Bank was taking on new loans all the time between 1920 and 1927; the Bank's deposits were constantly increasing and upon the other side the Loans and Discounts kept pace with the state of the growth; that if they got a depositor's money

(Testimony of Emery Olmstead.)

and couldn't loan it they wouldn't make any money; loans were made by the Executive Committee. The actual loaning was done by the senior officers but the Executive Committee approved them; ever since the Bank was organized it was one of the rules that the Executive Committee should pass on all loans, and if they didn't like them they would reject them and recall the loan. Thereupon the witness was asked this question,

“Q. Can you explain to us what the fact is and how it came about, while this Bank was so developing and its officers were so attending to it as you have described, that it became necessary in the fall of 1926, as we have been told here, to have a special requested examination of T. E. Harris, to see whether or not you could form a new take-over company; and just tell me the facts now as thoroughly as you can. I am trying to get it, to cover the ground, without asking particular questions.

A. The Examiner about a year prior to that time had asked us to take out those items, those slow assets, in other words, and Mr. Price's argument was that we were using all of our earnings for the purpose of reducing those items, and he didn't think it ought to be necessary to levy an assessment, or to voluntarily assess ourselves to take them out, as long as we were not paying dividends; and that he didn't want to ask the Pittock Estate to put up any money for that purpose. In the spring of 1926, after Mr. Wylde's examination,

(Testimony of Emery Olmstead.)

Mr. Price changed his mind on that, and told me he would agree to put up their share if necessary, and take out those slow assets, so that we could go on a dividend paying basis. It was understood that we were to go back and see the Comptroller and agree with him on what was to be taken out. Mr. Price and Mr. Stewart and Mr. Metschan went back and had a meeting with the comptroller some time I think in May or June, 1926, and came home and reported that they had agreed with the Comptroller that they would take out any items, or any frozen assets, after a [490—156] special examination by Mr. Harris, the Chief Examiner in this district, which would take place in the fall: and whatever Mr. Harris agreed upon should be taken out the Comptroller agreed that he would approve of it; and that is the reason that special examination was made, to determine what frozen assets should be taken out of the bank.

Q. All right. Now, did that leave this accumulated so-called new business, was that all free and clear of any criticism?

A. Yes. I don't think we charged off a hundred thousand dollars of losses for loans made after 1921." (R., 859, 860.)

Then the witness further testified that a plan was made to organize a corporation and to put in \$750,000 cash and bonds and assets for the balance up to \$1,500,000, and the Bank would carry the bond, and that this was before the report of Harris of

(Testimony of Emery Olmstead.)

1926. The directors asked him to see all the stockholders and the witness was supposed to go to them and explain the plan; they didn't want to put it in a letter because it might get out and he had told Mr. Harris, and told the board that he would not be able to do it in probably less than six months and see them all and get the thing cleaned up; that he wanted six months to clean up those assets and that this was in the fall of 1926, which would bring it into the spring of 1927, about April 1st; that there was afterwards a proposition for a State Bank in February, 1927, after they had failed to raise the \$1,500,000 and that this plan started after negotiations of the First National and the United States National failed, and from the time the loans were made and to the time they started to clean them up there wasn't a year that they didn't make at least \$150,000, but the Bank had not paid dividends and this had reflected on the institution and reflected on its standing in spite of the fact that the Bank grew; that deposits are [491—157] really the business of the bank, the real earning power, but there was one very embarrassing thing to the Bank, that several times Mr. Morden offered the Bank for sale; he spoke to Mr. Price about it and said "Can't you stop Mr. Morden from talking to these brokers and circulating around among other brokers saying the Northwestern National Bank is for sale." Some of our best customers came to me several times and we lost good business because of that. Mr. Morden didn't seem to understand that

(Testimony of Emery Olmstead.)

he couldn't sell the Bank; instead of coming out and offering his stock for sale, he said he was offering the control, I could name several accounts we lost; many people said they didn't want to stay in a Bank when they didn't know where the control would go, and these things were very harmful to us. After calling the same to Mr. Price's attention several times he said he would call it to Mr. Morden's attention; the fact that we were not paying dividends and had frozen assets all reflected on our institution, but in spite of that we made about \$1,400,000 and built our deposits up from fifteen to twenty million, and we used the \$1,400,000 to charge off losses; that Morden's efforts to sell the Bank commenced as early as 1923; there was opposition in the sense of competition that affected the conduct of the institution; the Northwestern National Bank had to fight the Portland Clearing House constantly ever since the Northwestern was organized; that he did not know of any director who went out and tried to help out with that competition; these situations increased [492—158] after they moved from Third and Oak to Sixth and Morrison Streets, and right then naturally the other Portland Banks were trying to make it hard for the Northwestern; other Banks had called him up about Morden trying to sell the stock as early as 1924; that matters of policy of a business nature such as selling a Bank are not usually and ordinarily done without the directors knowing about it; that there had been no Executive Committee meeting or directors' meeting at which

(Testimony of Emery Olmstead.)

to his knowledge there had been any suggestion of selling the Bank; that after the turn of the year 1927 the condition had become worse because the Wheeler deals didn't go through and Wheeler couldn't take his share as a stockholder in the proposed organizations to take over frozen assets. In the latter part of January, 1927, there were detailed negotiations with the United States National Bank and also with the First National Bank for the sale and disposition of the Northwestern National Bank. Mr. Price first conducted negotiations with Ainsworth of the United States National, and afterwards with Elliott Corbett, who went to his house and represented the First National Bank; that the Bank's loans were exhibited, and also the Comptroller's report of September, 1926, to their competitors, the report made by Harris; that as to the suggestion of informal meetings of the board of directors there were such if there was some action taken. There was always a record made of it. Mr. Price called the February 11, 1927, meeting, and it afterwards developed that Jones, Skinner and Stewart were the three officers [493—159] who had explained the notes and note pouch of the Northwestern to the First National, and had made more loans in the last five years and knew more about it than any of the rest of us, and I thought they should be the ones to analyze and describe the borrowers to the proposed purchasing Bank; that this matter had come up in Price's discussion with the witness; that at that time the First National

(Testimony of Emery Olmstead.)

Bank insisted upon the proposition, about February 11, 1927, that the directors or stockholders put up two million cash as a guarantee on top of capital and surplus, but these deals brought out that these Banks knew all about our assets, they knew all about our weakness, not only the officers but the auditing department, and I called the attention of our directors to that serious situation.

Thereupon the following questions were asked the witness and the following answers given:

“Q. And what did the directors do or say about it?”

A. Well, the directors then discussed what should be done, and we stayed there until about half-past eleven, or twelve o'clock, and I told the directors that some quick action would have to be taken; that rumors would start up, as sure as the world; this thing would get out, the public would know of it, and it would be impossible to stop it. And I suggested as a remedy, which had been suggested to me by Mr. Harris, that instead of putting up two million dollars guaranty to the First National Bank, to organize a state institution with two million dollars capital, take out these slow assets, which would be the offset to our Capital and Surplus of \$2,400,000, and liquidate the National Bank and give the stockholder of the National Bank everything that was coming to him, and the subscribers to the new Bank, or State Bank, would be in position to make money on their capital immediately, because we had an earning power; we had an earning power of

(Testimony of Emery Olmstead.)

\$250,000; and the directors seemed to think that that was a good solution. And I suggested that we adjourn to meet that night and think it over in the afternoon; that something must be done quickly. We met over in Mr. Price's office in the Oregonian Building, and the same directors were present. [494—160]

Q. This is the evening meeting?

A. This is the evening meeting, merely an adjournment. We met in the Oregonian Building, the same directors were present, and Mr. Price said that he thought that was a good plan to organize a new bank, and he assumed the responsibility of subscribing for the Pittock Estate, subscribing liberally to this new stock; and the stockholders or directors who were there, all those who could, subscribed. And then finally—when I say subscribed I think Mr. Metschan—Mr. Hart was there at the time—

Q. Mr. Hart sitting in the room here?

A. Yes; and I think Mr. Metschan asked each one what they could subscribe, and put it down, and when they added it up they had practically \$2,000,000 subscribed, \$200,000 surplus, paying it in at \$110.00 a share. Mr. Stewart was asked to see Mr. Bramwell, the State Bank Examiner, that night—we felt it that important—and secure from him a charter to be called The Northwestern Bank. And Mr. Stewart called Mr. Bramwell's home at that time.

Q. From that room?



(Testimony of Emery Olmstead.)

A. From that room. It was perhaps about ten o'clock and they told Mr. Stewart that Mr. Bramwell would be home later in the evening; but Mr. Stewart was to see Mr. Bramwell and have the charter ready by the next night—or the next afternoon, which I think was on February 28th. The same directors, I believe all of them were present at this meeting; and at the opening of the meeting Mr. Price said he had decided that he would not carry out the plan. Instead of organizing a State institution he was quite satisfied that he could go to each one of the stockholders of the Northwestern National Bank and get them to put up their \$37.50 a share, and take out these frozen assets; that he didn't want to give up the National charter, and he thought that we were strong enough to withstand any rumors that might come from it. I had met Mr. Price downstairs before the meeting; I had heard of his decision, and I told him he was making a mistake, and I said I am going to tell the directors what I think about it. He says, 'Now don't scare them.' I said, 'I won't scare them, Price, but I have had experience,' and I said to the directors at that time that if they didn't follow out this plan, organize this new Bank and show strength instead of weakness, that the Bank was gone.

Q. Now this was before you had resigned as president?

A. That was before I had resigned. I said that I was in a Bank in Minneapolis when I was a boy,

(Testimony of Emery Olmstead.)

when they had a run, and I knew what rumors meant, and I knew what it means to stop them; and if it got out that we had \$1,600,000 of slow assets, or more, if it got out we were negotiating with the First National Bank and had failed to make a deal with them, it would be a reflection on us and on the Northwestern National Bank, and that something had to be done, and done immediately to save our business for our customers—for our stockholders; and that if they were not going to carry out this plan, and if they were going ahead to try to effect this other organization, which would take maybe two months, that I was through for all time, and I handed in my resignation and walked out of the room.” [R., 883, 886.] [495—161]

The witness then testified,

Q. Well, we had Mr. Lindner on the stand, and in order to connect your narrative with that transaction he said he believed he talked to you or Bates; I wish to be certain if he talked with you in January, 1927, about his hundred shares. A. Yes, sir.

Q. And he said that some statement—I am trying to quote it correctly, but if Mr. Hart stops me please don't answer—that he believed that you had told him, or that he learned it from the transfer that was made afterwards, that Mr. Pittock would purchase stock at \$120.00 a share, and he sold fifty shares of it, as he remembered, to Mr. Pittock; and some other shares either through you or Mr. Bates, he thinks, to a broker. Now, do you know anything about that transfer? A. Yes.

(Testimony of Emery Olmstead.)

Q. I am not talking about the record of the transfer of stock; talking about the real deal, if you know it.

A. Yes; Mr. Lindner had been in prior to that time and said he would like to sell his hundred shares of stock, and when Mr. Pittock authorized us to buy some stock for him at \$120.00 a share, I called Mr. Lindner over the phone and he said he had sold part of his, but would be glad to sell the balance of it at that price; and the sale was consummated.

Q. So it was to you that he talked?

A. Yes, sir.

Q. Do you know what the fact is concerning the purchase of this Bank stock at that time?

A. Well, as I recall it, Mr. Price told me that some of the Pittock heirs would be willing to buy some more stock at this price, so that they, with the trustees, would have control of the Bank.

Q. In connection with the stock held by Morden and Price as trustees?

A. Yes, sir.

Q. Of the H. L. Pittock Estate?

A. Yes, sir." (R., 888, 889.)

The witness then testified that after the purchase by Wheeler of the Menefee-Standifer stock it was disclosed that Wheeler was considerably indebted to the United States National Bank of Portland, the Bank of California and other clearing-house Banks of Portland, and eastern Banks, and in such manner that if Wheeler went to any Bank to negotiate a loan or transaction it became known to an

(Testimony of Emery Olmstead.)

affiliated Bank and the entire relation became disclosed, and that caused trouble to the Northwestern National; and along about the 9th of October, 1924, [496—162] the board took cognizance of the relation of Wheeler's loans for the first time, while the witness was away. Then Wheeler was also identified as a director of the Lumbermens National, which was acquired by the United States National Bank of Portland by means of a sale and that Wheeler, Pittock and the witness had purchased over one-third of the Lumbermens National Bank with the expectation of taking it into the Northwestern, and it came about that the United States National had to buy this interest from Wheeler before they could make their deal; that loans commenced to Wheeler as early as he purchased "The Telegram" originally from "The Oregonian," and then it came about that there were offers made for the purchase of "The Telegram," and this continued along until the offer was rejected, and that the time fixed was after the examination in the fall of 1925 and the price was \$900,000; that Olmstead urged Wheeler to sell the paper so that the Bank would get the money, and that Wheeler then consulted with other directors, and they would not back the witness up in forcing the sale of "The Telegram," and that the witness could not get any support from the board in forcing Wheeler to do what the witness thought would get the Bank money, and although Mr. Morden was not a director of the Bank at that time yet as a Pittock trustee

(Testimony of Emery Olmstead.)

and manager of the Pittock estate in connection with Mr. Price he dictated the policies concerning the sale of "The Telegram" and directly expressed to the witness that he did not want the sale of "The Telegram" aforesaid, and that the witness then explained to Mr. Morden that the Examiner had asked for a reduction of the Wheeler lines, and that the sale [497—163] of "The Telegram" would be an opportunity to do so, and that Morden replied that he regarded Wheeler as perfectly good; and although Morden was not a director he remained active and in touch with the affairs of the Bank and offered suggestions and influence about them all along from the time he resigned up to and until the witness resigned in 1927, and this related to other things than the Wheeler loans and the general affairs of the Bank and to the Leadbetter loans, and the sale of the Pittock stock and the effect upon the Bank of that getting out; that the directors always listened to the representatives of the Pittock estate because they considered the Pittock estate in control of the Bank; that after the Fleischhacker deal for "The Telegram" had been opposed the witness renewed the Hearst deal for "The Journal" to buy "The Telegram," and then Price came to him about the time these negotiations were being closed and told him that they would rather have "The Telegram" go to Hearst than to "The Journal" because if it went to "The Journal" it would increase its circulation to a point in excess of "The Oregonian"; then after the witness resigned as president Price

(Testimony of Emery Olmstead.)

had shown him a telegram from Wilcox suggesting another purchase of "The Telegram" with an offer of some Eastern bank and the Anglo Bank to put up enough money to carry "The Telegram" until April 15th, but Mr. Price stated he would not agree to advance any more money.

"Herbert Fleischhacker, of San Francisco, requested an option on the Portland Telegram in December, 1925. The witness assumed but did [498—164] not know that the option was desired for the Hearst interests. Fleischhacker stated that he had a purchaser for the paper and wanted a thirty day option. Mr. J. E. Wheeler refused to sign such an option and he was not forced to sign.

"Within six months thereafter said J. E. Wheeler did sign an option for a smaller figure running to the witness but for the Hearst interests. Thereafter the Hearst interests made a thorough investigation of the paper, obtaining an extension of the option to a date in August, 1926, and then declined to exercise it.

"At about this time a sale of the paper was negotiated to the Oregon Journal and the deal reached the point of actually signing papers, but at the last moment Mr. Wheeler declined to sign." [499—164-a]

\*[These] transactions became ascertained and discussed in the Executive Committee of the North-

---

\*NOTE: Correction by Clerk U. S. Circuit Court of Appeals.

(Testimony of Emery Olmstead.)

western National Bank; then the witness was questioned and gave the following answers:

“Q. What I had direct reference to, is whether yourself and the associate directors, or Executive Committee— I don't know which way it was. Which way was it? You mean in the whole Board, or with the Executive Committee?”

A. You refer to this discussion?

Q. No. I am referring to the condition of Wheeler's affairs in these other banks shortly after the time you say Mr. Wheeler borrowed money to buy this stock, I understood you to say.

A. I just explained. We knew—the Executive Committee knew and our bank knew, our competitors knew, that Wheeler had lines in San Francisco; we knew he was borrowing money there; we knew he was borrowing money in Seattle and other places; and Wheeler came to me and told me that the fact that he had bought this particular stock and borrowed money of one of the banks in San Francisco, the Anglo Bank, to pay for it, which required \$630,000, that had gotten to his corresponding banks in San Francisco, the Crocker National Bank and the Mercantile Trust Company; after they found out that he had borrowed money to buy the bank stock, they cut out his line of credit.

Q. Was that matter brought up and discussed between you and your Executive Committee in your own Bank here?

A. At various times it was discussed, because

(Testimony of Emery Olmstead.)

Wheeler's lines were being reduced in other banks." (R., 920.)

When asked what the "Wheeler Lines" consisted of the witness said:

"The lines consisted of J. E. Wheeler, personally, Telegram Publishing Company, Wheeler Estate, Wheeler Timber Company, the McCormick Lumber Company, all of which were guaranteed personally by J. E. Wheeler, and then L. R. Wheeler had a line of credit independent. J. E. Wheeler did not endorse that or guarantee it, and those lines, including L. R. Wheeler, ran into about \$600,000." (R., 922.)

Thereupon the witness was shown Complainant's Exhibit 2 consisting of the McCormick ledger account commencing March 29, 1926, and asked whether that recorded the transactions in and out of the [500—165] McCormick Lumber Company with the Bank and he said that it did, then he was asked these questions and gave the following answers:

"Q. That same record will have correspondingly on it, will it not, both checks that went into the depositor's account and were credited, as well as the checks that came in transit and came back unpaid?

A. Yes, sir.

Q. And ultimately carried as Cash Items?

A. Yes, sir.

Q. Isn't that true? A. That is, true." (R., 924.)



(Testimony of Emery Olmstead.)

The witness then testified that any department carrying cash items or bills in transit carried those items specifically and they could be seen and indicated in any one department at any time, daily and monthly; that it was with the ruling of the Court that there was no controversy about it stipulated with as to the McCormick photostat statement sheets the "OD" on the ledger sheet was equivalent with the "OD" on the statement. The witness then testified that in 1924 in the transactions with the Wheeler business, checks and drafts, that Skinner and Stewart handled the matter along with him, and it was not done in any different way in 1926 after it started in March, 1926; that it was in July, 1926, that he knew for the first time that checks in any volume were coming back and that he then called Mr. Price into his room and told him about it. (929.) That they discussed the amount of them and he told Price about it as Chairman of the Board, and that the total at that time when he and Price first discussed it was something like \$200,000 (930); that he fixed the time as some time in July or the first of August; at that time Price and himself were informed that Wheeler [501—166] expected to get money from the Detroit Trust Company, and a few days later he informed Price that Wheeler had failed to get the money from it; that some time in August or September after these talks with Price, Price had said that Wheeler must get the money to take up the checks, and the witness had told him that every-

(Testimony of Emery Olmstead.)

thing was being done, and that Wheeler said that he would take them up as soon as he had made sales of either "The Telegram" or the redwood tract; that Wheeler's condition was understood and discussed right along with the Executive Committee (933); that there was no time when any director or officer who wanted to know the exact and precise situation of the Wheeler relationship with the Bank that he could not have ascertained it. The witness admitted that he had had the transactions with Ballin shown by the correspondence and exhibits hereinbefore recited; that the witness had during four successive years visited the Comptroller's office, with the knowledge of the directors, about the condition of the Bank, and had informed the Board upon his return in each instance and made known to his fellow-directors that the Comptroller insisted upon a more vigorous policy, but that immediate change of management had never been discussed with him at all. The change of management had come up in a letter from the Comptroller but the board of directors had never discussed it with him, and that no director or member of the Bank prior to February 28, 1927, had ever asked him to get out.

The witness was then asked under the conditions portrayed by his testimony what was usually [502—167] done in a Bank to meet the then situation as he then saw and knew it in the city of Portland at that time, and the Court refused to allow this question to be answered in form. The

(Testimony of Emery Olmstead.)

question was changed several times but the Court ruled it was not proper for this witness to give any expert opinion or to state any answer to such a question. Then the question was framed in this form and the following answers and proceedings had:

“Well, do you know if they did anything? Put it this way: Do you know if the directors did anything and if so, what, after you left them—

Mr. HART.—Unless the witness participated and knows, it is not fair to ask him. He was out of the management of the bank.

Mr. BRISTOL.—I asked if he knew.

Mr. HART.—What he may have learned?

COURT.—No, what he knew himself. Not what he learned of somebody else.

Mr. BRISTOL.—I asked him if he knew what the directors did after he went out?

A. No, I don't know anything about that.

Q. Were you told or informed about anything they did, up to the 29th of March?

Mr. HART.—He just said he didn't.

COURT.—By whom?

Mr. BRISTOL.—Anybody.

COURT.—On the street, rumors on the street?

Mr. BRISTOL.—No, I mean directors or officers of the Bank.

Mr. HART.—They can best testify as to what they did.

Mr. BRISTOL.—I think the declaration against

(Testimony of Emery Olmstead.)

interests can be made at any time, *id* any such declaration made.

Mr. MAGUIRE.—You should ask, if that is what you are trying to do, you should ask about the specific directors.

Mr. BRISTOL.—I want to find if anything said, first, then I can go to specific.

A. Yes, there was.

Q. From whom did you learn it, and when and where?

A. Mr. Stewart told me, that is all I know about it.

Q. And when did he tell you that?

A. I called on him one day right after the closing of the Bank. He said that the run had started about a week previous to the closing, in the savings department.

Q. And did he tell you anything about what the directors had done concerning that matter?

Mr. HAMPSON.—That would not be binding on anybody.

Q. Did he say what he did?

A. No, he didn't discuss that.

Q. Now, did you learn from any director other than Mr. Stewart, what had been done? [503—168]

A. No, sir.

Q. A paper was produced here purporting to have your signature to it, to an arrangement between the directors, some of the directors, maybe all of them, and the First and United States Na-

(Testimony of Emery Olmstead.)

tional Bank, as between them and Mark Skinner and O. L. Price and C. A. Morden, trustee. Was that ever explained to you? A. No, sir.

Q. The paper that was shown here purported to bear your signature thereon. How did that come up?

A. Well, Mr. Kerr or Mr. Kerr's office, called me, and wanted to see me, and he said, "Emery, I want you to come down to the Security Savings & Trust vault room."

Q. What time was this?

A. It was after the closing of the Bank.

Q. After the closing of the Bank? A. Yes.

Q. And can you tell the Court how long after the closing of the Bank?

A. Well, I think—I don't know exactly how long after it was; perhaps a week.

Q. You don't know how long it was after?

A. I think a week or ten days anyway; maybe longer.

Q. And you signed this paper then where?

A. In the vault room of the Security. And I said to Mr. Kerr, I said, "Jim, you know all about this: I am not reading this." "No" he said, "this is just agreeing to transfer the assets to the banks, to those two banks." And I signed it, and that was all there was to it.

Q. Were you informed, or did you know, by Mr. Kerr at that time that that did, or did not, involve a bargain and sale of assets and the assumption of the liability by these two banks, the First National

(Testimony of Emery Olmstead.)

Bank and the United States National Bank of Portland.

Mr. HART.—That is objected to as leading. The witness has stated what was said; if anything else let him say so.

A. Nothing more said between Mr. Kerr and myself.

Q. Prior to the time you so signed, or any time prior to March 29th, can you tell me if there was any assembly of the stockholders of the Northwestern National Bank?

A. I don't know whether there was or not.

Q. Well, you didn't attend any, did you?

A. No, sir.

Q. Do you know of any call of meeting therefor?

A. No, sir.

Q. You still remained a stockholder, and are still one now, aren't you? A. Yes, sir.

Q. Did you get any notice of one, I say of a call meeting of the stockholders?

Mr. HAMPSON.—We will admit no formally called meeting of the stockholders except as shown by the records.

Mr. LOGAN.—Admit no call.

Mr. HAMPSON.—No formal call for stockholders' meeting except as disclosed by the records.

Mr. BRISTOL.—From March 29th.

Mr. LOGAN.—They are all in evidence.

Mr. BRISTOL.—Then I understand what you mean, Mr. Hampson, do I get this precise as between you and Mr. [504—169] Hart, that both

(Testimony of Emery Olmstead.)

of you stipulate that there was no called deliberate assembly of the stockholders after January 11, 1927, until the meeting that appears in the record of May 3, 1927. Is that right?

Mr. HAMPSON.—I can't exactly say were no stockholders' meetings. I said that no stockholders' meeting was called in the manner provided for by the by-laws except as the record of such stockholders' meeting appears in the record-book which is already in evidence.

Mr. BRISTOL.—You agree with that, Mr. Hart?

Mr. HART.—Yes, I go further; I will say was none between the dates you specify; the record so indicates.

Mr. BRISTOL.—Mr. Hampson, don't say that.

Mr. HAMPSON.—I will go further than that; I have no doubt that the stockholders met and discussed the affairs of the Bank but not called as provided by the by-laws to make what would be technically called a stockholders' meeting." (941-945.)

Q. Now, the attempt of the warning to your own board of directors has all been testified to; you had some own reason, in your own mind, for giving that warning? A. Yes, sir.

Q. All right. I ask if you knew whether or not, and communicated to your Board, or whether they came to know that this information which involved the private and confidential matters of your own Bank, prior to February 28th, had been disclosed?

(Testimony of Emery Olmstead.)

A. I told them it would be disclosed.

Q. In connection with this matter that I asked you concerning the competition and competitive bank situation, I overlooked just one question: Was any application to your knowledge or that of your directors, ever made to you to participate in the Columbia Basin Wool Warehouse transaction, and did you or didn't you refuse to do so?

Mr. HART.—Objected to as wholly immaterial and foreign to any issue in this case.

Q. I want to know, Mr. Olmstead, what the fact is, if the Columbia Basin Wool Warehouse transaction, generally known in this town, had any effect on competitive relations of your Bank to the Clearing House Banks?     A. Yes, sir.

Q. Now, you may state to the Court when about it took place?

A. Why, Mr. Ainsworth who was vice-president of the Columbia Basin Wool Warehouse, came to me and wanted us or our Bank to take \$250,000 of their paper. I told Mr. Ainsworth we didn't approve of the way they were loaning their money on sheep and wool, and that we wouldn't carry it. He said we ought to do it as a matter of duty to the community, to help that corporation; I told him that we had sheep companies and wool companies we were carrying, and we felt we were doing our part; and he was more or less put out about it.

COURT.—What is the purpose of that character of testimony; to show that this bank failure was due to other banks, activity of other banks?



(Testimony of Emery Olmstead.)

Mr. BRISTOL.—It is alleged in the bill—  
[505—170]

COURT.—I am not asking what is alleged in the bill. I want to show what is the purpose of this testimony.

Mr. BRISTOL.—The purpose of it is to show the connection, physical connection, as the competitive fact, between these three banks, so that when there was disclosed to Mr. Price and these other gentlemen what came to be known as a general proposition to remove the Northwestern National Bank from its function as a financial institution in this community, it was up to these directors to recognize and know and act upon it.

Mr. LOGAN.—How could the directors themselves be blamable for enemies outside the Bank?

Mr. BRISTOL.—Not a contention of blamable.

Mr. LOGAN.—What are you suing for if not blamable. I don't understand and nobody else understands your bill.

Mr. BRISTOL.—All right." (941, 949.)

Thereupon this question was put to the witness:

“Q. Can you tell me how it was, if the Bank was an unusual success, as you described it to Mr. Hart, and in excellent condition that within twenty-nine days from that time it closed its doors?

A. I can only state the precautions that I would take, your Honor.

COURT.—I don't think that is proper.

Q. That is not the question, Mr. Olmstead. Can you state any specific thing that was discussed to

(Testimony of Emery Olmstead.)

be done by anybody, with a bank which you say was then an unusual success and in excellent position, with respect to the observed fact that it closed on the 29th of March?

Mr. HART.—Are you asking him for the years, up to the time he left?

Mr. BRISTOL.—Yes; covered by your cross-examination; if he heard anything discussed by anybody.

Mr. HART.—He covered that very fully.

COURT.—That anybody might be people on the street, rumors on the street.

Mr. BRISTOL.—I mean board of directors; I mean anybody in the Bank there, before you left the room.

A. At this directors' meeting?

Q. Yes.

A. There was nothing discussed there at all that would—no plan was discussed to safeguard the Bank's interests after this information was out.

COURT.—What information do you refer to?

A. The information that we had given out to other banks, regarding the Comptroller's reports and criticisms. The only thing that was discussed—the principal thing that was discussed, was organizing a new corporation in order to take out these slow assets; these slow assets that we all knew should come out; and it was either through the organization of this separate corporation, or the directors voluntarily assessing themselves 100%." (962,964.) [506—171]

(Testimony of Emery Olmstead.)

The witness was then asked this question:

“Q. You say even including what was denominated as the Wheeler transaction, there was actually to impairment of the Capital, Surplus and Undivided Profit, and that if this two million dollars had been put in the Bank would have been in excellent condition and unusually prosperous?”

A. Yes, because it would have eliminated those frozen assets that the Comptroller was criticizing. He didn't criticize them as losses, you understand, or even doubtful, in some cases; some of them were doubtful in his mind, but they were frozen. They were securities that we had taken for debts contracted that we hadn't realized on, and we couldn't realize on it without a great sacrifice.

Q. Each successive director as he came along in his course of conducting that bank, dealt with these things just as you did, didn't he?

A. Yes, sir; those things were discussed at nearly every executive committee meeting, or at least every time a renewal note came up the subject was brought up, which was at least every ninety days, sometimes every thirty days. I had special reports on them, and sent to the appraisers to appraise the property, and all those things. They knew all about it.”  
(R., 971, 972.)

TESTIMONY OF ELLIOTT R. CORBETT, FOR  
COMPLAINANTS.

ELLIOTT R. CORBETT testified concerning the times he met Price in February, 1927, and of the details concerning the transactions between Price, Skinner and Stewart, and talks with Ainsworth about the sale of the Bank as heretofore explained by other witnesses, and the notes and everything of the affairs of the Bank were disclosed to them, and they wanted to find out whether there were sufficient assets at that time to offset the liability of the Bank; they actually wanted an accounting and there was a guaranty at that time of about two million. This was about the 19th of February, 1927, and that was made a condition by the two banks, the First and the United States National, before they would take the so-called assets; and that the same report of conditions that he saw and heard on or about the 28th of March, 1927, was the same report that was made to Mr. Ainsworth and Mr. Dick of the United States [507—172] National Bank, who were at that time with him waiting the report of the auditors on the 27th or 28th of March, 1927, in the Northwestern Bank Building.

TESTIMONY OF — GRIGSBY, FOR COMPLAINANTS.

GRIGSBY as a witness testified of the demand made upon Skinner and the directors on behalf of the respective complainants before suit.

TESTIMONY OF J. C. AINSWORTH, FOR COMPLAINANTS.

J. C. AINSWORTH testified that he was president of the United States National Bank of Portland, Oregon, at and during the times covered by the evidence and had been in the banking business in Portland, Oregon, since 1893; that propositions had been made to him in the year 1923 and at later times and in 1927 for the purchase of the Northwestern National Bank and its deposits; that the first time was when Mr. Morden and Mr. Menefee came to see him; that at the time the first proposal was made to him for the sale the deposits were around eighteen or twenty million, and at that time Mr. Olmstead was East; that after deducting the deposits for public money they figure not less than three and up to five per cent as the value thereof to the business, and that the things that would enter into the elements of the terms of value would be the condition of the paper of a bank and its good will. The amount of deposits and their value is affected by the equivalent amount of loans on the other side, having regard to whether the

(Testimony of J. C. Ainsworth.)

loans and discounts are sufficient to pay the deposits and, if not, somebody has to put up for it, and if the capital, surplus and undivided profits were wiped out that would confront [508—173] the Bank's real value; that in March, 1927, they were all night long going into the loans before the Bank suspended, working with a crew of men to analyze as far as possible the value of the assets, and it was discovered that all the capital, surplus and undivided profits were short by about two million of paying the deposit liability; they found that it would take all the Bank's capital, surplus and undivided profits at an even two and one-half million. 100% assessment in addition meaning two million more or four and one-half million, and that to reinstate the capital, surplus and undivided profits would require two and a half million more which would take about seven million dollars, because there were several millions of dollars frozen assets (226); that the million dollar notes, two of them each, were involved in the transactions with his Bank and the First National, and were treated as cash because Mr. Price delivered the equivalent in bonds; that his Bank and the First National didn't take the notes but took the actual bonds, and after the deposits were all paid why then there was to be turned back to Price and Skinner the pledges. That application was made to the Clearing House Association of Portland, Oregon, on the 28th of March to guarantee the deposits but that was declined. There had been general withdrawals of the Bank's

(Testimony of J. C. Ainsworth.)

funds for several days before them, and Mr. Chas. H. Stewart, one of the directors, had told him that he would not open in the morning.

The examination made by the United States National Bank and First National Bank, jointly, was made during the [509—174] night before the day on which the Bank suspended. The work was done during the night for the purpose of determining, so far as possible, the value of the assets in view of the fact that a demand for all of the deposits was made since the disturbance had already started and it was necessary to be prepared to pay off all deposits of eighteen million dollars beginning the next day. The effort was to get the immediate value because there was an immediate demand for cash. The next day the United States National and the First National together put up practically eight million dollars. It was known that there would be a demand for all the deposits because depositors were in line at seven o'clock in the morning; and the examination that was made was with that thought in mind.

On cross-examination this witness testified that the figure that specified as the price for [510—174-a] the control of the bank stock was \$150 a share when Mr. Price began the negotiation; That the United States and First National Banks together put up practically eight million dollars on the 29th and 30th of March, 1927; that on subsequent liquidation greater values had been realized

(Testimony of Paul S. Dick.)

than those placed on the assets at the time the examination was made March 28, 1927.

### TESTIMONY OF PAUL S. DICK, FOR COMPLAINANTS.

PAUL S. DICK testified that he was one of the officers of the United States National Bank and that the first negotiations of sale of the Northwestern was February 24, 1923, and at that time Mr. Menefee urged his continuance as manager of the bank in order to hold the business, and the next time there was any negotiation familiar to the witness was March 28, 1927, fixed as the time, shortly before the run on the Northwestern; he thought that the time of Mr. Price's suggestions of sale of the Bank was three days before March 28, 1927, but was not certain whether it was before or after Olmstead resigned; that the proposition was that Mr. Price thought the United States might be interested in buying the assets of the Bank providing an offset in negotiable securities and cash could be offered, and the building was discussed, and at that time Mr. Price gave them figures representing their status of notes receivable. The witness was then shown Complainant's Exhibit 30, and asked whether that contained the figures of the published statement of the Bank that he received from Mr. Price, and he stated that Price had given them the figures from the report of the National Bank Examiner, from T. E. Harris, in the report [511—175] of



(Testimony of Paul S. Dick.)

March 5, 1927. Mr. Hart then stated that he thought Mr. Dick's recollection as to the report must be mistaken because the conference with Price and the United States *Nation* was at a time before Olmstead was out of the Bank and, therefore, the Harris report referred to by the witness must have been the one of September, 1926, and the witness then corrected his testimony. There were two conversations, however, one with Mr. A. L. Wright, the vice-president of the United States National and the other one was with Mr. Ainsworth, the previous witness and Dick. Mr. Price was alone but he read from the Examiner's report; that was before Mr. Wright, the witness, Mr. Tucker and Mr. Ainsworth. The stock ownerships of the Bank were discussed; that the witness had learned that G. K. Wentworth had represented an option also on the stock of the Northwestern National Bank some time prior to the time when Price came to see him. At this time they had learned that the First National Bank of Portland had already been consulted about a deal, but the witness was quite sure that the proposal made to them was not discontinued for that reason; that a meeting of the Clearing-house Association was held in the afternoon of March 28th in the directors' room of the First National Bank but nothing was done, and the meeting adjourned until 8 o'clock that night, and Price then returned to the meeting with Mr. Skinner and Mr. Stewart. A clearing-house conference then ensued and the clearing-house banks did not act and it was decided that

(Testimony of Paul S. Dick.)

the officials of the First National Bank and the United States [512—176] National should examine the Northwestern National Bank with the idea of guaranteeing payment of deposits providing the status of the Bank seemed to warrant such action.

That on the morning of March 29th there was a review of the findings, officers and officials of all banks being present, and then came about the arrangement that developed in the United States National and the First National taking over the Northwestern Bank; that taking complainant's exhibit 30 as then indicative of the capital, surplus and undivided profits, \$2,521,676.17, the discovered losses would wipe out the entire amount; that it would have taken \$6,400,000.00 cash to have reinstated the Bank's condition at that time; that Elliott Corbett had talked to him about the figures that had been presented to the First National during the time of the negotiations with that Bank for its sale; Mr. Corbett quoted the figures and he discussed them with Mr. Mills.

On cross-examination this witness testified that the way they arrived at their figures was to qualify the different paper according to its goodness, and that which was not quite so good, with a graduation downward so that there would be some paper which was considered worthless; that there had been a very unexpected liquidation since in its yield. The process they used to determine the status of the

(Testimony of Paul S. Dick.)

Bank was just the same whether it would have been for a purchase or to protect it with its depositors, and what they were trying to arrive at was whether the [513—177] First National or the United States National would be protected for any money they put up. In analyzing the paper they had the judgment, knowledge and skill of the officers of the Northwestern National Bank as well as the officers from both the other Banks, and the discussion of values proceeded from these three sources, and gave a very good opportunity of determining the values of the things they were dealing with. There was no effort on the part of anybody to depreciate the character or value of paper, but only to ascertain the real facts. The book value of a Bank's stock is ascertained by taking the capital, surplus and undivided profits and add them together and divide by the number of shares; that is the true real book value; that loans and discounts have to be examined in relation to the deposits from the standpoint of a loss itself becoming a deposit, or on the other hand a credited deposit becoming a loan.

The examination made on the night of March 28, 1927, was for the purpose of ascertaining what assets were available for the payment of all depositors in cash. The examination was concerned chiefly with what was available for immediate use.

Thereupon Complainant's Exhibit 51 was offered in evidence consisting of the published statements for each successive date from September 15, 1922,

(Testimony of Paul S. Dick.)

to and inclusive of the printed statement of March 23, 1927, of the Bank's resources and liabilities.

Thereupon DICK continued his testimony and the daily statement book was shown the witness, the same book [514—178] that the other witness testified about, and Transit Items, bills in transit and Cash Items were exhibited to the witness, and in connection therewith the white sheet designated "Computation of reserve to be carried to the Federal Reserve Bank," and the witness testified that the daily statement as shown him was intended to reflect the Bank's [515—178-a] actual condition and the figures and items would show the position of the Bank in the morning following completion of those figures, and disclose the amount of balance the local Bank would have with its correspondents, the amount that it had with the Federal Reserve Bank, the amount of cash that the Bank had on its own counters to do business with that day, the amount of items in transit, sundry bills and bills in transit, the amount of uncollected items or Cash Items and if Cash Items went out and what was called the ledger teller would have to show in his figures the amount of items that had been returned unpaid and for which the Bank had not realized upon, and those Cash Items together with the cash would have to be considered together on that particular morning to inform any officer looking at it what the condition of his Bank was, but that Cash Items as shown on the sheets would not count as legal reserve of the

(Testimony of Paul S. Dick.)

Federal Reserve Bank (780), but they would have to be included in the figures with the general book-keeper showing the status of the Bank in order to arrive at the cash.

TESTIMONY OF CHARLES A. BURCKHARDT, FOR COMPLAINANTS.

CHARLES A. BURCKHARDT testified that he was one of the complainants; that he had paid June 25, 1918, \$31,250.00 for 250 shares of stock of the Northwestern National Bank; that he had received a letter, exhibit 53, from O. L. Price, vice-president dated December 1, 1921, and the meeting that was to take place was to specially consider the increase of the capital stock, and then exhibit 54 was introduced. These were followed by the letters from Burckhardt to Olmstead and Olmstead to Burckhardt, concerning [516—179] the relationship to take more stock at the price of \$150 a share; and them Exhibits 56 and 56-A were offered in evidence of May 1922, followed by Exhibit 57; and thereupon the witness wrote Phil Metschan, one of the directors and defendants, the letter of March 25, 1925, marked Exhibit 58, and in connection with that letter the latter of Olmstead addressed to Burckhardt and his reply, Exhibits 59.

The witness was thereupon shown a paper offered and received in evidence like the foregoing exhibits and numbered 60, which he said he talked over with Mr. Skinner, Mr. Olmstead and Mr. Metschan, and

(Testimony of Charles A. Burckhardt.)

that Mr. Skinner had told him there was a movement on by the Pittock Estate to get control of the bank and to sell it to the First National Bank, and they wanted to prevent that and that was the reason that he had signed the agreement and that he had discussed the matter with Metschan before he signed it, who had told him that he (Burckhardt) could sign it but that he (Metschan) would not sign it.

The witness' attention was called to the date February 25, 1925, written in Exhibit 60, over the date April 1, 1925, and this exhibit purported to limit each signer not to sell or transfer his shares or any other shares he might have acquired to any person not a party to the agreement unless a majority of those signing it should consent to the sale; Wheeler, Olmstead, Collins, Skinner, Stewart, McDougall and J. O. Elrod being the signers in the order named, reference being had to Exhibit 60; that he had discussed with Mr. Metschan the affairs of the [517—180] Bank and the Dufur Orchards, and that Metschan admitted they would have to take a loss, and that Metschan had told him he didn't have any confidence in Mr. Wheeler.

The witness was always assured that the Bank was in good condition by his talks with Olmstead or Metschan and Skinner, and on March 2, 1926, Metschan wrote him a letter and it was received and offered in evidence as Complainant's Exhibit 61, and on March 4th the witness again received a letter in 1926 from Phil Metschan, and in reply to it March 6th, both were received in evidence and

(Testimony of Charles A. Burekhardt.)

marked Exhibits 62 and 62-A, and during that period the witness was in Portland almost every week and afterwards coming down occasionally during 1926; that some time in these visits he had a talk with Mr. Metschan and was told that they were going to organize a new company with a capital of \$750,000, and there would be an assessment against the stockholders of the Bank of \$37.50 a share, to take out some of the slow assets in the Bank that the Comptroller wanted taken out. This was after the letter of March 4, 1926, and his reply thereto; that he received a letter from Olmstead November 4, 1926, and replied thereto (Exhibits 63 and 63-A, and received an answer to his letter and made a reply thereto (Exhibits 64 and 64-A); and then he had a talk with Olmstead and Olmstead told him that he thought he could get \$120 a share for his stock but nothing was said by Olmstead of the visit of T. E. Harris, Bank Examiner, in September, 1926, nor to ascertain if Skinner had said their assets were enough to make a new take-over company. [518—181] That the witness had generally seen all the officials when he came down but there was nothing said about that matter; that the witness came down before the stockholders' meeting January 11, 1927, and saw Mr. Metschan and he left his proxy here and went back to Seattle, that was Saturday, January 8th. Metschan then told him that the matter of making a new company would come up and the \$37.50 share matter at that meeting but did not tell him that anything had been previously done in

(Testimony of Charles A. Burckhardt.)

the Bank that would come up at that meeting but he was not told that he would not be required to act upon any previous transactions as a stockholder. In order to show the relation of proxies and the giving thereof, and the reception of the same, the letter of McNary, the proxy, to the witness was placed in the record but ruled by the Court not to be competent evidence against any defendant but filed as a reference in the record relating to this proxy and for identification it was marked Complainant's Exhibit 65 and 66. That Metschan had called him up on the telephone in Seattle at his house after this stockholders' meeting and just prior to the time that Olmstead retired as president of the Bank, and asked him to come over to Portland as there was a crises in the Bank, but the witness could not catch the train but he called him back the next day and said that everything was fixed up, and said it wasn't necessary for him to come over. No details were given. Metschan had told him early in 1926 at the time of the offer of \$120 a share that he didn't think that the stock should be sold, that the Bank was in better condition than it had been for a long time. Before the Bank [519—182] closed he came down several times and on one of these occasions he saw Mr. Metschan and Mr. Price, shortly after he became president of the Bank, and he explained to the witness what these crises were about. Mr. Price then told him about the offer to the First National, and that was the first the witness had learned of it. This was shortly after Mr. Price became



(Testimony of Charles A. Burckhardt.)

president when witness came over and found out what it was all about and Olmstead went out and Price went in; that there had never been any previous indication of change from anybody.

Thereupon Complainant's Exhibit 67, 67-A and 68, the latter being the letter of November 2, 1927, to Skinner, were then offered in evidence; that the witness had received statements of the Bank from time to time identical to the ones published in "The Oregonian" and from what he saw and received there was nothing indicated which showed anything wrong with the Bank.

On cross-examination this witness testified that he had received the paper first through Mr. Skinner. He had come over to sell his stock for \$140 a share, but found out about this pooling arrangement was on and he had no opportunity to sell his stock; the first time he saw Exhibit 60 it had three signatures on it, Wheeler, Olmstead and Collins, and the witness signed next. Mr. Skinner kept the paper after witness had signed it; he found the paper several months before trial in his papers in Seattle and had sent the paper by mail down to his counsel, or brought it over in person; that all he could say about the document was that he recalled [520—183] when he signed it but couldn't remember what happened afterwards; that he was absolutely a blank. Thereupon the following proceedings took place on the cross-examination of this witness by Charles Hart:

"Q. It is your thought these directors were re-

(Testimony of Charles A. Burekhardt.)

miss in their duty in that they were too lenient with you in the matter of your \$30,000 loan?

A. No, sir.

Q. It was all right to refrain from suing you, wasn't it? A. They had ample security.

Q. Had they collateral for this \$30,000?

A. Yes, they certainly have. They have the collateral of the Alaska-Pacific Fisheries Company attached to that note—the stock of that company.

Q. Do you mean to say that stock has any value to-day? A. Yes, sir.

Q. Sufficient value to pay this \$30,000 note?

A. Yes, sir.

Q. Do you say that the Bank and its directors should have sued you and forced your payment, or were they within the bounds of good judgment in not suing you, and in relying on that collateral?

Mr. BRISTOL.—If your Honor pleases, there is a limit to proper cross-examination.

COURT.—I think he has the right to find out. This man is charging the directors with negligence in not collecting these debts.

Mr. BRISTOL.—The complaint has no such theory as Mr. Hart is attempting to insert into it. In other words there is a difference here quite distinctly between what Mr. Hart is trying to get here, and what your Honor has been given to understand. Here is a trusteeship, and the faithfulness in regard to it, coupled with certain surrounding circumstances. Now, the private transactions of this man

(Testimony of Charles A. Burekhardt.)

are no more subject to question than you informed counsel when I was examining Mr. Menefee.

COURT.—Altogether a different question.

Mr. BRISTOL.—The situation about is simply this: I have said that as between these people and ourselves we are willing to come to an accounting; if they will account to us, we will account to them. That is the gist of this case in that regard. If an accounting is required all these other private transactions certainly haven't any relevancy here.

COURT.—I understand you are charging these people with negligence, with accountable negligence in not managing this Bank.

Mr. BRISTOL.—As the intent of our bill, yes. But that is not the whole gist of the action by any means.

COURT.—This is one of the men making that charge. Now counsel has the right to know—

Mr. BRISTOL.—Just a moment, so you don't make any mistake.

COURT.—I may make a mistake, but I will be responsible for it if I do.

Mr. BRISTOL.—Very well; I call it to your Honor's attention. [521—184]

Q. Now, Mr. Burekhardt, you knew that these men in charge of this Bank were relying upon their intimate acquaintance with you, and on their belief in your business integrity and their belief that you would pay this note of yours, didn't you?

A. They knew that I had 250 shares of stock in

(Testimony of Charles A. Burckhardt.)

their Bank, which was more than enough security to pay that note.

Q. You don't mean to say that that was classed as security for your note, do you?

A. No; but they knew I owned that stock.

Q. You didn't pay the note, did you?

A. They never demanded it.

Q. All right. Now, then, something else. You mean to say that you refrained from paying this note, or any of these notes, at their maturity, just because these directors didn't demand it of you? Is that the reason you didn't pay?

A. If they demanded it I would have had to pay it.

Q. If they had forced you, you would pay?

A. Certainly.

Q. Then you think they were remiss that they didn't force you, is that it?

A. I will answer that question this way: If it depended upon the success of that bank to have that money to keep that bank going, then they certainly were remiss in not asking me to force collection.

Q. And until they did—until that time came you felt free to decline to pay?

A. As well as loaning the money to other people. What is the difference as long as they had plenty of security.

Q. You were called upon specially to pay in November 1926, by Emery Olmstead, were you not?

A. Yes.

(Testimony of Charles A. Burekhardt.)

Q. And you didn't pay because you didn't want to sell other property at a sacrifice?

A. And they renewed the note. If Mr. Olmstead had insisted it be paid, I would have had to pay it.

Q. You knew that because of the knowledge and acquaintance these men had of your business operations, and their belief in your business integrity, they didn't need to worry about your money?

A. Yes. I am still solvent and can pay it.

Q. And you in turn were imposing upon them because you knew they would not be likely to force you as they would force a stranger?

A. I was borrowing money from other banks and renewing them in the same way. I didn't see anything exceptional about that. This is not the only bank I was borrowing money from.

A. Are your affairs in shape now, Mr. Burekhardt, so that if this lawsuit ends disadvantageously to you, you will promptly pay this note?

A. I can pay." (R., 530, 533.)

There was introduced in evidence, and to which the defendants' objected, the document of June 2, 1927, which purported to recite the meeting of the [522—185] board of directors of the Northwestern National Bank showing in its recitals a resolution, on motion of Collins seconded by F. F. Pittock, and at which meeting Spaulding, Price, Metschan, Collins, Pittock and Skinner were present, that "Whereas the bank held certain notes, acceptances, drafts and other obligations of Wheeler Timber Company, and others, of which the validity was

(Testimony of Charles A. Burckhardt.)

*question,*” and other recitals relative to those transactions with respect to the same named parties consisting of several items, it was then recited, Item 5,

No credit was ever given by the Bank to J. E. Wheeler or anyone else on account of this draft, and the draft has not been included at any time in the assets of the Bank. The Bank agrees to surrender this draft any time to the Wheeler Timber Company for cancellation.

There was also offered in evidence Complainant’s Exhibit 69, the report dated September 21, 1926, as made by Harris, and also the report made by Harris, March 5, 1927, Complainant’s Exhibit 7, to which the defendants objected.

Thereupon complainants closed their case.

The following evidence was given by the defendants, O. L. Price, Charles H. Stewart, Mark Skinner, E. S. Collins, Phil Metschan and Charles K. Spaulding in the order named, and no other defendant testified. [523—186]

#### TESTIMONY OF O. L. PRICE, FOR DEFENDANTS.

PRICE testified that he came with the Bank as chairman of the board of directors in January, 1923, and had been vice-president since 1919; that the Bank found itself faced by loans that had become slow and frozen following the deflation in 1920 and 1921. The Bank had enjoyed a very rapid growth, in fact the peak of some of its deposits

(Testimony of O. L. Price.)

amounted to something like twenty-eight million, at which time they had something like nineteen million in loans, all in the main supported by collateral, and that collateral at the time it was taken had a sufficient margin, but during the deflation that margin was wiped out, and they found many cases where the loans were not adequately secured, and as quickly as possible the collateral was converted into property of the Bank; the Bank made some very substantial earnings, on an average of from \$150,000 to \$200,000 a year from 1920, but ceased paying dividends in 1920; that they made every effort that he thought it was possible to make to realize on slow paper; members of the board met regularly and discussed matters and devoted a great deal of time trying to work out problems; that he would drop into the Bank at different times where there were no special meetings; that there was a very small loss on loans prior to the deflation, and that the charge-offs were made on the profits that the Bank had on hand, that is, earnings when profits were made would be credited to profit and loss to offset charges and that same account as the result of getting rid of charging off part of the slow paper. This was done after the Bank Examiner had answered the question of what were [524—187] losses or determined bad losses. Critical letters were received from the Comptroller, but the witness said he did not recall that the Comptroller had called their attention to losses excepting as determined by the Examiner, which he said were charged

(Testimony of O. L. Price.)

off; that he did not recall that they ever refused to or *refrain* from calling off any losses that were said to be so by the Examiner. By the purchase by Wheeler of the Menefee stock they were enabled to get a sufficient amount of stock to make the sale of the Bank, for which tentative proposals had been made at that time to other people. Mr. Olmstead first told him about the purchase of this stock by Wheeler in 1923. When the loan of \$150,000 was made to Wheeler in 1925 he never questioned Wheeler's credit, that he investigated the considerations before the Committee and he thought those were sufficient. The whole transaction seemed to be one that was wisely handled, and that the loans to Wheeler in 1925 was a prudent step for the Bank to take, and that subsequent developments have shown that step to be a proper one. The reason was that the collateral he got for both indirect and direct indebtedness, for all his indebtedness and for that known as the Wheeler Line, his individual guaranties were held; that applied to the Wheeler Estate, the Wheeler Timber Company and "The Telegram" and such as was owed by the McCormick Lumber Company by reason of returned checks; that he had never seen Exhibit 60 before until the trial of this case. The first suggestion of forming a subsidiary corporation to take over the assets of the Bank was in 1926 by Examiner [525—188] Wylde. The purpose was to organize a company and put in sufficient cash to take all frozen and criticised assets out of the bank and avoid criti-



(Testimony of O. L. Price.)

cisms that were coming from the Department, but the witness wouldn't say anything that might be subject to criticism; the purpose was to take out those which the Department had criticised as being carried as an asset. By the spring of 1926 the Bank demonstrated it had a good earning capacity. A committee was sent to visit the Comptroller and to go over the situation in Washington, D. C., getting his assistance and suggestions on the manner in which to carry out a plan tending to get the result which was desired, and that was taking out all criticised items which would in any way affect the payment of dividends. A letter was sent on the subject and a meeting arranged. Stewart Metschan and Price went to Washington about June 28th, 1926, at which time Comptroller McIntosh and several deputies were present, and all matters thoroughly gone over, and the Comptroller determined to hold his final consent or objection until after the next examination, at which time it was suggested that Chief Examiner Harris be present, and this was the examination in the fall of 1926 in September; that was the time for the regular examination. It was determined that there was a million and a half which should be taken out as frozen and slow paper, \$750,000 to be cash and \$750,000 to be bonded through a subsidiary. A change in management was discussed with the Comptroller at that time, and it was deemed advisable by the Comptroller *and* that if any change was made it should not be made until after this [526—189] liqui-

(Testimony of O. L. Price.)

dating company had been organized and completed. A suggestion was made to the Comptroller that inasmuch as Olmstead had sold most of the stock of the Bank that it would be easier for him to see the stockholders than anybody else, and that was agreed to by all and the results were reported to the board when they returned. Then they waited until after the examination in September. The board determined to go ahead with the plan if approved by the Comptroller and after this examination the Comptroller was met in San Francisco with the Chief Examiner, Mr. Harris, by appointment in the latter part of December, 1926, in company with Charles H. Stewart, they had their lists and all matters relating to the Bank and everything for examination was gone over, and the plan was approved by the Comptroller, and they advised that when this plan was completed that we could begin paying dividends of 5 or 6 per cent beginning with the first quarter of 1927; then an effort was immediately made to interview the stockholders and get their consent to putting up \$37.50 a share, and the officers and directors were active in order to get the plan going up to the 8th or 9th of February, 1927; the greatest difficulty appeared to be getting the payment by Mr. Wheeler. He had a large block of stock. His payment would be a large amount. He was expecting to get his money every day and it was not determined until after the 11th of February, 1927, that he could not raise his part. That assurances were given the bank by Olmstead who

(Testimony of O. L. Price.)

had reported at each meeting and always assured of the progress that Wheeler was making and that he expected to make a sale any time and reduce [527—190] his indebtedness if not pay entirely, but the plan was not carried out and was given up on discovery of a large amount of frozen checks of Wheeler's running into some \$800,000, of McCormick Lumber Company obligations, that Wheeler was not going to be able to make the payment of this float or kite let alone the payment of \$180,000 on his stock in the subsidiary company, and it appeared that the redwood sale was not going to be consummated, at least within a reasonable time, and that in the judgment of the witness if the plan had been carried through it would have accomplished what he and his board thought it would, and that was the judgment of Chief Examiner Harris and the Comptroller expressed by them in these meetings to the witness.

That the executive committee functioned regularly every year from 1922 to 1926 and the Examining Committee functioned every year during that period since the organization of the Bank with very fair and efficient examinations, and the examinations took five or six days at a time, three members of the board acting upon the Examining Committee, and they called for information from different departments and examined it and they did make the inspections that the reports called for, and they did come to the Bank and they did their work at the Bank, and this was true of all examinations

(Testimony of O. L. Price.)

of the Examining Committee, and that they did so efficiently, and as to investigations as to credits and things referred to in the reports the witness thought that was always efficiently done. The Examining Committee did not include officers of the Bank. [528—191] In March and April, 1926, the attention of the board of directors was called to the fact that there were in the cash items of the Bank at the time of the First National Bank Examiner's examination certain checks and acceptances of Wheeler or the McCormick Lumber Company amounting to some \$47,000, representing returned checks but which he said at the same meeting had been removed during the course of his examination. These checks had been deposited to the account of J. E. Wheeler. The McCormick Lumber Company had no account there at that time, and it was at the close of that examination that the witness' attention was called to the presence of these checks but that he had said the Examiner told him that during the course of that examination these checks had been taken care of, and that that meant they had either been paid or in some manner removed from the Bank's assets; and at that time there was a criticism of acceptances being carried in the assets of the Bank. These were drafts drawn on Wheeler and Wheeler acceptances which were being renewed and carried in bills in transit, and the Examiner suggested that these be removed from bills in transit and placed in notes and discounts. Thereupon this witness testified by question and answer as follows:

(Testimony of O. L. Price.)

“Q. I direct your attention to testimony given by Mr. Olmstead in this case, in which he said that he had a conversation with you in July of 1926, at which the subject of Wheeler’s acceptances were discussed. What is your statement as to that? Did you have such conversation in July about acceptances?”

A. Not at that time. These acceptances had been taken out of Bills in Transit and put in Notes and Discounts in April.

Q. And when did you have a conversation?

A. No, I didn’t at that time. I have no doubt I had with reference to these acceptances at that time, because we were all discussing them. [529—192]

Q. That is in April?

A. In April, yes, when they were transferred from Bills in Transit to Notes and Discounts.

Q. You say you have no doubt that you had a conversation with him in April about it?

A. I have no doubt I had.

Q. What if any conversation did you have with Mr. Olmstead in July about Wheeler, or the Wheeler obligations?

A. Oh, I couldn’t answer that; I spoke about Wheeler and his obligations and his lines I suppose every day or so; that was a matter of constant discussion between us, as to Wheeler’s lines, and whether he was making sales, and how soon he would be able to take his share of the proposed

(Testimony of O. L. Price.)

liquidating company; we often had discussions on that subject.

Q. State whether or not during any of these conversations during the summer or fall of 1926, and up to the first part of February, 1927, Mr. Olmstead ever disclosed to you that the McCormick Lumber Company checks were being received for credit and were being returned unpaid?

A. We never had any conversation about it.

Q. State whether or not he at any time directed your attention to the McCormick Lumber Company account, or to the dishonored checks deposited and credited in that account?

A. He did not." (R., 1022, 1023.)

That no one during the summer or fall of 1926 had ever directed the witness' attention or ever mentioned to him that checks deposited in the McCormick Lumber Company account were coming back unpaid, and that he had no information during the summer and fall of 1926, until February 8th or 9th, 1927, whatsoever that any practice was going on which sanctioned the receipt and approval of checks for deposit in the McCormick Lumber Company account, which checks later came back unpaid, and upon being asked whether he had any knowledge at all as distinguished from information the witness *witnessed* answered he did not, and that during this whole period nothing occurred at any time to give him the slightest suspicion that any officer of the Bank was approving checks regularly for immediate credit and the checks themselves coming back

(Testimony of O. L. Price.)

dishonored, and that during all this time he had the fullest confidence in every officer of [530—193] the Bank and that during this period he examined the daily statement of the condition of the Bank as was his custom to look at it every morning and he did so most of the time "HAVING IN MIND OF COURSE CERTAIN PURPOSES IN LOOKING AT IT."

The witness was not at the Bank all day until the first of March, 1927, but was at the Bank every morning. The loaning officers met every morning and he was always at the meeting when in the city and that meeting had before it the daily statement and a continuation of the deposits whether or not they had increased or decreased and everything with reference to the commercial deposits and savings accounts, and it was the general practice daily for him to look at matters which would attract his attention and every time he looked at the daily statement there were usually figures that were set in, not part of the debits and credits, but all during all of these times he was never suspicious or on the watch for anything irregular; that never entered his head.

The witness then, in response to a question, detailed in his own language what he said was discovered and the circumstances of that discovery:

"A. I think it was on Tuesday evening after one of our executive meetings, I came from the room and Mr. Skinner and Mr. Stewart were at the desk of one or the other, and they called me over, and

(Testimony of O. L. Price.)

one, I think it was Mr. Stewart, said that he thought there was something phony about the Wheeler matter, and I asked him what it was, and he said, 'Well, I think it involves the boss.' I asked again, and I was—didn't get any information. I says, 'I will find out.' The next morning, which was our regular officers' meeting, at which were present among others, Mr. Olmstead, Mr. Stewart and myself. In fact this conference which I now repeat was only between Mr. Olmstead and myself; the other officers had gone out, and I was sitting at the end of the desk, [531—194] and Mr. Olmstead's secretary brought in a deposit book with some items for deposit. As he took the deposit from the deposit book I recognized immediately Mr. Wheeler's signature. I asked Mr. Olmstead, 'What is that?' He says *were* deposits by Mr. Wheeler. I says, 'What does it represent?' He says, 'It is checks drawn on eastern banks which I O. K., and I only O. K. them when I have a wire stating that the funds are there to meet it.' With that he drew from his desk a roll of telegrams, without showing me the telegrams, intimating that those were the telegrams he referred to. I said, 'Has Wheeler any float in this Bank?' He said, 'Yes.' I said, 'How much?' He said it amounted to several hundred thousand dollars. Immediately with that he got up, and walked back and forth across the floor, and recited how that he had been trying for months to get Mr. Wheeler to make some sales; that Mr. Wheeler each day had promised him that sales were



(Testimony of O. L. Price.)

about to be consummated. He had been after him constantly, and he knew, and I knew he had to make those sales, but he had been unsuccessful. He talked for some little time. I said nothing. After he got through I walked out to Mr. Skinner's desk. Mr. Skinner was also secretary of the Board; and I told Mr. Skinner, 'Mr. Wheeler has a large amount of float in this Bank, you call a meeting of the Board of Directors immediately.' He said, 'How soon?' I said, 'Just as soon as you can get them.' This was Wednesday morning. I knew that Mr. Spaulding usually was in Salem on that day, and it might take a little time. So I went immediately from there to Mr. Morden's office. Mr. Morden is my co-trustee in the Pittock Estate, and I told Mr. Morden what I had learned. I went from his office into Mr. Pittock's office—Mr. Pittock was one of the directors—and told him. I didn't go back to the bank until about four o'clock in the afternoon, at which time Mr. Olmstead met me and said he wanted to talk with me. I failed to say that I had asked Mr. Skinner to notify Mr. Olmstead that I had called a board meeting. Mr. Olmstead said, 'Mr. Skinner tells me that you have asked for a Board meeting.' I says, 'Yes.' 'Well,' he says 'When are you going to have it?' I says, 'Just as soon as we can get it.' He says, 'I wish you would wait until Wheeler can get back; Wheeler is in San Francisco, and I want him at that meeting.' I says, 'How soon can he get here??' He says, 'I was speaking to him today, and I told

(Testimony of O. L. Price.)

him he would have to come, and he will be here Friday morning on the early train.' I says, 'That is all right.' I told Mr. Skinner then to make that call of the board for nine o'clock Friday morning. Friday morning when—

Q. Before you get to that, state whether or not any instructions were given to discontinue accepting for immediate credit any more checks deposited in the McCormick Lumber Company account?

A. No instructions were given until the meeting on the 11th or Friday.

Q. Go ahead.

A. Mr. Wheeler came to the Bank. In the meantime I had asked Mr. Olmstead to get for me as nearly as he could the exact amount of this float. He said he would have to get it from the bookkeeper, Mr. Wheeler's bookkeeper. [532—195] On Friday morning when Mr. Wheeler came in I asked him if he had a list of these amounts, and he said approximately, and he and Mr. Olmstead were working on this matter until about eleven o'clock, before the board actually met. Before the meeting of the board Mr. Wheeler said that the amount was \$554,000. When the board met I informed them of the purpose of the meeting, and I asked Mr. Wheeler what he intended to do about these checks as they were returned. He started in talking about the sales he was just about to make, the redwood sale, and we called him away from San Francisco; he thought he had a sale for this Trask timber, and undoubtedly he

(Testimony of O. L. Price.)

would very soon make a sale of the 'Telegram.' I told Mr. Wheeler that he didn't have time to make sales, he would have to arrange to get that money quickly some other way; and I suggested to him that this was a time he would have to call on his family. He said that he couldn't talk to Biff, his brother, and the only one he could talk to was William, who was then in San Francisco. I asked him to talk with William, and he said he didn't like to take William away from San Francisco because he was working on this redwood deal, which sale certainly would be consummated in a few days. After a considerable discussion—Mr. Olmstead had asked me what was to be done—I said we would pay no more; we would give him credit for no more such checks. Mr. Olmstead wanted to know what we would do about the checks that were coming back, and I told him if he can't take them up they will have to go in the usual course. He says, 'Do you realize what that means? When this amount of checks comes back to this bank?' I says, 'Yes, I fully realize it, and we will take our medicine now.' The meeting adjourned after a considerable discussion. The next day was a holiday, February 12th, Saturday. On Monday morning when we expected William Wheeler up here—we had asked for him to come—Mr. Wheeler came in, and we asked where William was. He said he wasn't coming yet. We asked if he had talked with him; he said, 'Yes, I talked with him over the phone Friday, but he couldn't come.' I asked him if he had told him

(Testimony of O. L. Price.)

of the difficulty he was in. He said, 'No, he couldn't talk over the phone. And then from that time on we were working with Mr. Wheeler, Mr. Olmstead and myself, trying in every way possible to see if we couldn't raise a sufficient amount of money to meet this float.

Q. During the week following February 12th you think you were in constant touch with Mr. Wheeler in an effort to get him to do something?

A. Constantly.

Q. And during that same period I assume these checks which were in the course of—were in transit—were gradually coming back.

A. They were coming back. I asked the auditor to advise me on it as rapidly as they came back, so I would know the amount.

Q. And when they were all in they amounted to what? A. Almost \$800,000.

Q. After your discussion with Wheeler, which you say you got nowhere, what next was done?" (R., 1026, 1030.) [533—196]

Thereupon the witness stated that the details of abandoning the plan previously described as growing out of the meeting with the Comptroller and that as a chance circumstance he met with Mr. Wright and Mr. Dick of the United States National Bank, who had informed *that* that they had understood on the street that the Pittock heirs were buying up some stock, and if there was any thought of selling the Bank they would be interested, and this led into a discussion and the witness

(Testimony of O. L. Price.)

tried to get an offer, and at this time Olmstead undertook negotiations with the First National Bank; both sets of negotiations were being carried on at the same time; the witness having nothing to do with the First National until after the United States National deal was called off when he participated with Olmstead, and this was the time that Elliott Corbett on the 23d of February came to his house and Olmstead and he discussed with the First National Bank the matters referred to in the letter from the Comptroller following the examination in September, which set out in a general way the criticised items, and that was followed by sending some of the officers to the Bank with some of their loans or, at least, their principal loans, and they so nearly got together that it became necessary for the First National to go a little more into detail as to their assets and then it came about that it seemed to be wise to tell them about the float, stating that that would be one of the matters which they would deem rejected assets and they would take it out of the amount that they would give them. As the witness expressed it, we had a capital and surplus of [534—197] two million four hundred thousand dollars plus, and undivided profits and we would add to that any appreciation that would be in our building which we were satisfied would be some few hundred thousand dollars, and we would add to that the amount which the First National Bank would allow us for the first premium on deposits which

(Testimony of O. L. Price.)

would bring it up and they would pay us the balance in cash. That was the program.

The Elliott Corbett was asked to meet the witness at his brother's office in the Corbett Building, and the witness told him just what they would find when they got into the assets and that he had not told him before because it should not interfere with the sale because we were going to take that as part of the rejected assets. At this time the witness said he was negotiating a loan of the First National Bank because Olmstead had retired from the negotiation. Finally we adjourned the matter until the last Sunday in February, 1927, and they told me what they would do and it was a proposition that was impossible for us to carry out,—“not impossible to carry out but it made negotiations impossible.” They required that we should put up immediately \$2,250,000 in cash against which they could charge anything that they liked, only allowing us a percentage on such deposits that would remain on the list of March 1928, after the lapse of a year's time. During this period the board was almost in daily session and it was concluded that if we were required to put up this money to the Bank that it would be [535—198] better for us to put up two million ourselves and continue in business, and we thought if we did that that we would be in excellent condition, and this resolved itself in two propositions, one was to organize a new Bank with two million dollars capital and purchase the Northwestern, and the other was to put the money in in the form of an assessment

(Testimony of O. L. Price.)

and continue under the old charter. If we organized another bank the money would have to be paid in by those who would subscribe and if it would have to be raised by assessment it would have to be raised either voluntarily or involuntarily on the part of the stockholders, and we had a meeting that night and it was agreed that payment of two million dollars to be subscribed to whatever plan would be finally determined as a wise one and that when they did finally determine it it was not to go ahead with the state bank. Mr. Olmstead did not make any subscription, he was present, but the two million was fully subscribed that night, and when we left the situation that received the most favorable conclusion seemed to be the state bank, although there was some objection to it. No conclusion had been really reached and we adjourned to meet the next morning, and I reached the determination that they were not advisable,—the witness described the situation in his own words as follows:

“In the first place Mr. Pittock had started this bank and in his will provided that the trustees might invest his surplus moneys in good securities. He made a provision however, that the trustees could advance such money as might be necessary, either with or without security, to protect that estate. It was a serious matter in my mind whether [536—199] or not that would permit us to step out and subscribe in a different—in a new bank; I know that it could only have been considered in consideration of preserving the estate.

(Testimony of O. L. Price.)

Q. Just an emergency.

A. As an emergency; would not be proper for us otherwise under instructions, and there might be some difficulty in that, although I felt certain that Mr. Pittock would expect us to put up every dollar that might be necessary to protect that which he had—the investments which he had made. We knew that sooner or later the information in reference to this large amount of money would become—

Q. You mean the \$800,000 float?

A. The \$800,000.

Q. Kite or whatever it was.

A. Would become known outside. It was very necessary that something be done, and something be done quickly. The plan that we wanted was the one that would attract the least attention on the outside. For us to organize a new state bank would seem to advertise to all the world that there was a reason and we would have to give that reason; every depositor would have to have his bank changed; he would have to know that it was a different bank; the matter of going from a national bank to a state bank I think is, I feared might be considered as showing weakness. We were then members of the clearing-house and also of the Federal Reserve Bank. I figured that if something did happen, if we were in the clearing-house or in the Federal Reserve Bank we would have to make new application which might take some time to become members of the clearing-house and also of the Federal Reserve. We were at that time indebted to the



(Testimony of O. L. Price.)

Federal Reserve Bank something like a million and a half which would have to be paid immediately if we liquidated the Bank. From the standpoint of what was fair to the stockholders, it seemed to me it was an unwise thing to do. If the new stockholders in the new Bank should pay more than it was worth, it would certainly be unfair to the new subscribers. If it paid less than it was worth it would certainly be unfair to those stockholders who remained in the Northwestern but didn't become members of the new Bank. It seemed to me that we might go ahead and continue under the arrangement of assessment, and then I believed that we could go before our stockholders' committee and tell them the truth, and I had confidence enough to believe that most every one of them would pay their hundred per cent assessment voluntarily, especially if we provided—especially after we had raised the two million dollars; that is what the Bank immediately could pay; and those who couldn't pay we would have enough money raised so that the government and depositors would be satisfied, and from this sum that we could raise, out of the two million dollars—we could pay from that sum such amount, if it became a voluntary assessment as the stockholders would refuse to pay. We went further than that and suggested at that time that we would take this amount of money—we would go to the stockholder and ask him to put up 100% assessment. If he says I can't do it, then we will say, out of this pool which we have raised we will loan [537—

(Testimony of O. L. Price.)

200] the money to make up your own payment; if you will turn the stock over to us we in turn will give you an option to repurchase that at that time within one year, plus six per cent interest. It seemed to me that was a fair thing to do, and a wise thing to do in the circumstances.

Q. You proposed to virtually buy or take over the stock of any stockholder who couldn't or wouldn't pay; but the stock at a nominal figure, and pay the assessment upon it. A. Yes, sir.

Q. And give your stockholders the right to buy it back in one year for the amount of the assessment which you had paid on it? A. That is true.

Q. Now, were all of these reasons detailed by you at your meeting of the board of directors on the Monday morning following?

A. When we met the next morning—I may be wrong a day or two there; I don't know whether the first of March came in on Tuesday or Wednesday; and the next morning in our board of directors meeting these matters were detailed to the board, and I think they thought that the matter of going on with the old institution and putting in this money in this manner, was the advisable thing to do.

Q. And was this decision reached at that meeting?

A. And that decision was reached at that meeting. We then raised approximately one million in cash, and were willing—entered into a writing showing that we were willing to stand back of the Bank and raise if necessary the other million. And

(Testimony of O. L. Price.)

we then called in the Bank Examiner, the local man, Mr. Crowley, who advised us the manner in which to do it.

Q. Did you then arrange for another examination made by the Federal Bank Examiner, so as to form the basis for an involuntary assessment should it become necessary?

A. Just before that night, on the first day of March, when this matter was determined and this money was raised, and we called the board together, Mr. Olmstead presented his resignation and I was elected president of the institution; and immediately thereafter when we called the Examiner in, the local man, and asked him how to prepare—how to handle the matter—of course it became necessary to have another examination showing that the capital was practically wiped out, so as to make an involuntary assessment if necessary. We then requested an examination, and that is the one followed when Mr. Harris came up and made another examination.

Q. That was for the purpose of having a legal basis upon which an involuntary assessment of 100% could be levied against the stock if you found it impossible to get a voluntary assessment?

A. Yes, sir.

Q. And was it at this time that there was made public through the newspapers, the statement substantially as that—as it appears in the bill of complainants in this case?

A. Yes. That article appeared in the Oregon-

(Testimony of O. L. Price.)

ian, and was submitted to me before it was printed, and I approved of it. [538—201]

Q. That spoke of the fact that the Pittock Estate had acquired a larger share of ownership in the Bank. Was that what it referred to, this increase of stock holdings?

A. I don't think that was hardly the statement that was made. It didn't speak of them having acquired a greater share, but a larger interest, I think. That interest was \$769,600, which they put up. (R., 1039, 1043.)

Then the examination of March 5, 1927, hereinbefore referred to was brought about and they proceeded along a plan to about the 24th of March for a voluntary and involuntary assessment of stock. The Bank's assets had value and the 100% assessment was designed to protect it. There were some withdrawals, Mr. Olmstead going out they knew would cause comment and they started into get themselves in the best possible condition by calling in notes as rapidly as possible and getting clear as quickly as possible the Federal Reserve Bank so that they could go back to it and get their full amount if required. Then came rumors of defalcation. There was a slight decrease in deposits, corresponding increase in savings, and the witness went to San Francisco in the latter part of March to see Mr. Fleishhacker because both Wheeler and Olmstead owed the Anglo Bank money on their stock and the 4,700 shares affected the matter; and he also went to see Ballin, one of the complainants

(Testimony of O. L. Price.)

herein, and he saw Dollar and the Standard Oil People and made efforts to get money, and finally Skimmer telephoned him that conditions were bad and he was fearful about consequences and the witnesses accordingly returned to Portland Saturday night arriving Monday morning.

He finally saw Ainsworth as the result [539—202] of Mr. Dick or Mr. Wright asking him to come down to the United States National and he then added that he had no knowledge of any acts during the past years of the First National or the United States National which might be unfair to the Northwestern; that he had no such knowledge; they were competitors but they wanted to be fair as far as he knew. He stated this in view of the testimony of his talk with Ainsworth; and it was suggested to go to the clearing-house and a meeting was held that afternoon. The run was then on at the Bank but the clearing-house meeting came to no determination although it was expected to be able to send some representative from the clearing-house to tell the crowd not to worry and the clearing-house couldn't see their way to get back to the Northwestern; but a decision was reached as to the guarantee they were willing to put up to the clearing-house but the clearing-house couldn't act upon that; they postponed the meeting to an evening meeting and the witness then went back to determine what to do. It was necessary to borrow a large amount from the Federal Reserve and they borrowed two and a half million during that day.

(Testimony of O. L. Price.)

We wanted to see what we might do about raising two million which we all agreed might be easily raised. The deposits were about eighteen million beginning of business Monday and about three million was paid that day. Mr. Morden, his co-trustee, went with him to the meeting that evening along with Mr. Crowley, the Bank Examiner, Mr. Stewart and Mr. Skinner and after considerable discussion it was decided that United States National [540—203] and the First National would be willing to assume and pay our deposits providing they could be secured by a sufficient amount of assets and guaranties. At this meeting it was tentatively determined that the First National and the United States National assume the responsibility and the report was made to the board of directors and it was the unanimous opinion of the board that the depositors must be paid without delay whatever securities might be necessary on their part conditioned upon the examination during the night by the two banks, whereupon came the examination that Mr. Ainsworth described, and in the early morning of the following day these banks stated how they would carry out their program, and their requirements were conceded with in every respect. We had put up a million dollars in cash at that time and they required us to put up a million which we said we would guarantee in cash between that and ten o'clock in the morning, and we entered into a separate guaranty of two million dollars to be signed by the Pittock Estate and the directors in-

(Testimony of O. L. Price.)

dividually and leaving still to them our stockholders' liability. These conditions were all acceded to. We raised this other million *and* between that and ten o'clock in the morning, and signed the guaranties. The arrangement also required us to liquidate the Bank.

The witness then testified that the Bank was closed out and the liquidation had been handled by the officers of the Northwestern in a very excellent way and the witness further testified the opinion that the Bank was with that additional capital in excellent condition. [541—204]

The defendants insist, over the objection of the complainants, that in lieu of the statement of the witness O. L. Price on direct examination, on the foregoing pages 187 to 205, that there be substituted the statement prepared by the defendants so that the Appellate Court may have the benefit of each statement and the objection of the complainants to the substituted statement of the defendants in that regard with respect to the direct testimony of O. L. Price as hereby noted, and the substituted condensation of the testimony of the witness Price as suggested by the defendants to be inserted herein is as follows:

TESTIMONY OF O. L. PRICE, ONE OF THE  
DEFENDANTS.

Witness became chairman of the board of directors of Northwestern National Bank in January, 1923, having been vice-president for several years prior thereto.

The deflation which came in 1920, following the inflation which came immediately after the war, left the Northwestern National Bank with loans that had become slow and frozen. Nearly all of these loans were made prior to 1920, during a time when the Bank was enjoying a very rapid growth. At the peak of this growth the Bank had deposits amounting to about twenty-eight million dollars with about nineteen million in loans. These loans in the main were supported by collateral which when taken had a margin of value which was sufficient. During the deflation this margin was wiped out so that in many cases the loans were no longer adequately secured. As rapidly as possible [542—204-a] this collateral was foreclosed upon and converted into property of the Bank.

During the years 1921 and up to 1926 the Bank made very substantial earnings, running from \$150,000 to \$200,000 a year from 1920 on; and this was despite the fact that the Bank discontinued paying dividends in 1920.

Every effort was made to realize on this slow paper held by the Bank. The board met regularly and considered all loans that were giving trouble.



(Testimony of O. L. Price.)

The officers who had the several loans under their respective supervision were called upon for reports, and the board advised with these officers continuously in the attempt to liquidate the slow loans. The board of directors, and particularly those who were on the executive committee, paid extremely close attention to these matters. They met regularly every Tuesday, going over old loans as well as new loans and renewals, and they devoted a great deal of time in the effort to work out the problems not only at meetings but by dropping into the Bank every day to see what could be done.

There was a very small amount of loss incurred by the Bank on loans made subsequent to the deflation period.

Action was taken regularly to charge off slow and frozen paper whenever, following examinations by the National Bank Examiner, a decision would be made by the Examiner that any particular loan should no longer be carried as a live asset. The earnings which were made in these years were credited to the profit and loss account and corresponding debits would be made for all slow paper charged off so that the earnings were thus absorbed into the assets of the Bank to replace the slow paper taken out. In every case these charge-offs were made after the Examiner had determined subsequent to his examination what loans should be charged off.

(Testimony of O. L. Price.)

Occasionally letters were received from the Comptroller of the Currency which were critical in tone, but there were no criticisms of loss not charged off and the witness does not recall that the Bank ever refused or refrained from charging off any paper that was determined to be a loss by the Examiner.

Witness did not learn about the purchase of some 4,000 shares of the stock of the Bank in 1923 by J. E. Wheeler from Messrs. Menefee, Jones and Standifer, until after the purchase had been consummated. Witness had nothing to do with the matter and knew nothing about it until the deal was [543] closed. About that time there had been some negotiation for the sale of the Bank and the purchase of stock made by Wheeler put an end to the attempt to sell the Bank in that those attempting the sale no longer had a majority of the stock of the Bank. Witness first learned of this stock purchase from Mr. Olmstead, the president.

Witness was not present at the meeting of the executive committee of the Bank at which an additional loan to J. E. Wheeler of \$150,000 was authorized, but upon his return to the city witness investigated and reached the conclusion that it was good judgment to make the loan, particularly because collateral was secured to cover not only the new loan but prior loans. This proved to be true when Mr. Wheeler subsequently became involved, since the Bank was placed in the position of a holder of substantial collateral for all the Wheeler

(Testimony of O. L. Price.)

indebtedness, including the indebtedness of the Telegram Publishing Company, the Wheeler Estate, the Wheeler Timber Company and the McCormick Lumber Company.

Witness had never seen prior to the trial the Exhibit 60, an agreement between stockholders made in 1925, pledging the signers not to dispose of the stock except following an agreement of the majority.

The first suggestion that the Bank form a subsidiary corporation to take over certain unproductive and slow assets came by way of a recommendation on the part of Bank Examiner Wyldé after his examination in March, 1926, and the same recommendation was made by the Examining Committee of the Bank shortly thereafter. The plan was fully discussed by the board in March and April, 1926, and the conclusion reached that a company should be organized with sufficient cash capital to permit it to acquire from the Bank all assets which had been criticised, so that the Bank could at once resume the payment of dividends and avoid further criticism from the Comptroller of the Currency. The plan had been fully developed and approved by the board prior to the receipt of the Comptroller's letter in April, 1926. It contemplated taking out all slow assets of every kind so that the earnings of the Bank which had been reasonably constant and adequate for the purpose could be devoted to the payment of regular dividends.

In the effort to put this plan into effect the board

(Testimony of O. L. Price.)

decided to send a committee to Washington to go over the whole situation with the Comptroller of the Currency. Such a committee, consisting of Mr. Metschan, Mr. Stewart and the witness, went to Washington for this purpose. Mr. Olmstead had been appointed as one member but being [544] unable to make the trip, Mr. Stewart went in his place. The conference was held about June 8, 1926, with the Comptroller, Mr. McIntosh, and several of his deputies. The last preceding report made by Bank Examiner Wylde was thoroughly examined and discussed. After the conference the Comptroller stated that the plan for the formation of a subsidiary seemed to be a wise program and stated that he would give his final consent or state any objection he might have, after the next regular examination which was scheduled to take place in the fall of 1926. It was also suggested that Chief Examiner Harris should participate in the forthcoming examination so that there would be no question of the sufficiency of the examination. The plan as put before the Comptroller was to have a subsidiary with \$750,000 capital secured by having each stockholder of the Bank subscribe \$37.50 to the stock of the subsidiary for each share of Bank stock held. With this capital the subsidiary would purchase a million and a half of frozen and slow paper, giving its notes or bonds for the balance of the purchase price, secured by a lien on all of the assets taken over. This would give the Bank \$750,000 in cash and \$750,000 in bonds of the sub-

(Testimony of O. L. Price.)

sidiary secured by the entire million and a half of assets taken over.

At the conference with the Comptroller there was also considered the suggestion theretofore made by the Comptroller in his letter written in April, 1926, that a change of management would be advisable. The conclusion reached by the Comptroller and the committee was that the change, which meant the resignation of the president, Mr. Olmstead, should not be made until after the liquidating company had been organized and the transfer of assets consummated.

The proposed plan for a subsidiary necessarily would require some little time since the stockholders would have to be given the facts orally rather than through correspondence. For this reason also the Comptroller agreed that Mr. Olmstead should remain during the consummation of the plan since he was best equipped to explain the necessity for the liquidating company to the stockholders.

The board and the management of the Bank started in immediately upon this program, some stockholders having been interviewed even before the plan was fully decided upon, although it was not possible to make final plans until after the fall examination by Chief Examiner Harris and the expected approval of the Comptroller was secured. This examination was had as planned and immediately thereafter witness and Vice-President Stewart met the Comptroller and Chief Examiner Harris in San Francisco. At [545] this meet-

(Testimony of O. L. Price.)

ing the whole situation was reviewed and the plan for a liquidating company was approved by the Comptroller, and witness was advised that when the plan had been completed the Bank could resume payment of dividends beginning with the first quarter of 1927. This meeting in San Francisco took place just before Christmas, 1926.

Between the time of the San Francisco meeting and the 8th or 9th of February, 1927, the officers and directors of the Bank were very active in the attempt to get the stockholders to make their subscriptions to the stock of the liquidating company. The chief difficulty encountered was in getting the payment required from J. E. Wheeler who held a large block of the stock of the Bank. He was expecting daily to make a sale of timber which would enable him to take his share of the stock of the liquidating company. The board received reports at each meeting from Mr. Olmstead giving the progress that Mr. Wheeler was making and believed up to the time the so-called "float" was discovered in early February that the plan could be carried through; and the plan was not given up until the discovery of the "float" made it clear that Mr. Wheeler was not going to be able to take his share of the stock of the liquidating company, and also that the frozen assets necessary to be taken out had been increased by nearly \$800,000, the amount of the so-called "float." Witness has no doubt that if this "float" or "kite" had not occurred the plan for a liquidating company would have been consum-

(Testimony of O. L. Price.)

mated; and this was the judgment also of Chief Examiner Harris and the Comptroller of the Currency.

In all of the years since the organization of the Bank the Examining Committee of the Board of directors functioned regularly each year as contemplated by the by-laws. The examination usually took five or six days or longer and the witness believes the examinations were very fair and efficient. The Committee consisted of three members of the board of directors; they came to the Bank and worked there collecting full information from the different departments and themselves inspecting and examining the material brought to them. The members of the Committee were, of course, not technical bankers but their work as described in their reports was efficiently done. The Committee always consisted of directors who were not officers of the Bank giving their entire time to the Bank's affairs.

In March or April, 1926, Bank Examiner Wylde in the usual meeting with the board of directors following an examination, informed them that there were included in Cash Items \$47,000 of [546] checks which had been deposited to the credit of the account of J. E. Wheeler but which had not been paid by the drawee banks and therefore had come back and were being carried in the Cash Items. At this time the McCormick Lumber Company was not a depositor nor was it a borrower from the Bank. The information given by the Bank Ex-

(Testimony of O. L. Price.)

aminer was that whereas these unpaid checks were found in the Cash Items at the beginning of the examination, they were removed during the examination. The Examiner also called the board's attention to the fact that there were some Wheeler acceptances or drafts drawn on Wheeler which had been accepted by responsible parties but which had been renewed instead of being paid when they matured. The Examiner criticised carrying these renewed acceptance of Bills in Transit and stated that they should be replaced with notes so that the notes could be in Notes and Discounts. They were thereupon transferred to Notes and Discounts.

The conversation which the witness Olmstead stated he had had with the witness in July, 1926, regarding Wheeler acceptances related to these acceptances referred to by the Examiner and the conversation must have taken place in April.

There were other conversations with Mr. Olmstead frequently about the Wheeler obligations. The question of Wheeler's share in the proposed liquidating company was a subject of constant discussion between Mr. Olmstead and the witness, but the witness never had any conversation with Mr. Olmstead during the summer or fall of 1926 and up to the first part of 1927, regarding unpaid McCormick Lumber Company checks which had been accepted for credit and later returned unpaid by the drawee banks. The attention of the witness was not directed to the McCormick Lumber Company account nor to the return of checks at any



(Testimony of O. L. Price.)

time during this period by any officer or employee of the Bank, and the witness had no knowledge up to the 8th or 9th of February, 1927, that any practice was going on under which McCormick Lumber Company checks were accepted for immediate credit and later received back unpaid. Nothing occurred during this period to give the witness the slightest suspicion that any transaction of this kind was going on; and the witness had the fullest confidence in every officer of the Bank. Witness was at the Bank every morning, spending most of the forenoon at the Bank, and it was his custom to look at the daily statement every morning, having in mind, of course, certain purposes in examining the statement.

Witness did not devote his full time to the Bank's affairs during this period or at any time until the first of March, 1927, but it was his [547] custom to go to the Bank every morning, always participating in the daily meeting of the loaning officers when in the city. This meeting had before it each morning a statement showing whether deposits had increased or decreased and data with reference to the commercial deposits and savings account. In looking at the daily statement witness made it a practice to look at the figures showing net profits, gross deposits, bills payable particularly those owing to the Federal Reserve Bank, and then the segregated deposits—savings, commercial, etc. The testimony of the witness regarding the discovery of an irregularity in the acceptance of Me-

(Testimony of O. L. Price.)

Cormick Lumber Company checks for immediate credit is as follows:

“Q. Coming now to the early part of February, 1927, you have already stated that an irregularity was discovered. Will you please give the circumstances of that discovery?”

A. I think it was on Tuesday evening after one of our executive meetings. I came from the room and Mr. Skinner and Mr. Stewart were at the desk of one or the other, and they called me over, and one, I think it was Mr. Stewart, said that he thought there was something phoney about the Wheeler matter, and I asked him what it was, and he said, ‘Well, I think it involves the boss.’ I asked again, and I was—didn’t get any information. I says I will find out. The next morning, which was our regular officers’ meeting, at which were present among others, Mr. Olmstead, Mr. Stewart and myself—in fact, this conference which I now repeat was only between Mr. Olmstead and myself; the other officers had gone out, and I was sitting at the end of the desk, and Mr. Olmstead’s secretary brought in a deposit book with some items for deposit. As he took the deposit from the deposit book I recognized immediately Mr. Wheeler’s signature. I asked Mr. Olmstead, ‘What is that?’ He says were deposits by Mr. Wheeler. I says, ‘What does it represent?’ He says, ‘It is checks drawn on eastern banks which I O. K., and I only O. K. them when I have a wire stating that the funds are there to meet it.’ With that he drew from his

(Testimony of O. L. Price.)

desk a roll of telegrams, without showing me the telegrams, intimating that those were the telegrams he referred to. I said, 'Has Wheeler any float in this Bank?' He said, 'Yes.' I said, 'How much.' [548] He said it amounted to several hundred thousand dollars. Immediately with that he got up, and walked back and forth across the floor, and recited how that he had been trying for months to get Mr. Wheeler to make some sales; that Mr. Wheeler each day had promised him that sales were about to be consummated. He had been after him constantly, and he knew, and I knew he had to make those sales, but he had been unsuccessful. He talked for some little time. I said nothing. After he got through I walked out to Mr. Skinner's desk. Mr. Skinner was also secretary of the board; and I told Mr. Skinner, 'Mr. Wheeler has a large amount of float in this Bank, you call a meeting of the board of directors immediately.' He said, 'How soon?' I said, 'Just as soon as you can get them.' This was Wednesday morning. I knew that Mr. Spaulding usually was in Salem on that day, and it might take a little time. So I went immediately from there to Mr. Morden's office. Mr. Morden is my co-trustee in the Pittock Estate, and I told Mr. Morden what I had learned. I went from his office into Mr. Pittock's office—Mr. Pittock was one of the directors—and told him. I didn't go back to the Bank until about four o'clock in the afternoon, at which time Mr. Olmstead met me and said he wanted to talk with me. I failed to say that I had

(Testimony of O. L. Price.)

asked Mr. Skinner to notify Mr. Olmstead that I had called a board meeting. Mr. Olmstead said, 'Mr. Skinner tells me that you have asked for a board meeting.' I says, 'Yes.' Well, he says, 'When are you going to have it?' I says, 'Just as soon as we can get it.' He says, 'I wish you would wait until Wheeler can get back; Wheeler is in San Francisco, and I want him at that meeting.' I says, 'How soon can he get here;' he says, 'I was speaking to him to-day, and I told him he would have to come, and he will be here Friday morning on the early train.' I says, 'This is all right.' I told Mr. Skinner then to make that call of the board for nine o'clock Friday morning. Friday morning when—

Q. Before you get to that, state whether or not any instructions were given to discontinue accepting for immediate credit any more checks deposited in the McCormick Lumber Company account? [549]

A. No instructions were given until the meeting on the 11th, or Friday.

Q. Go ahead.

A. Mr. Wheeler came to the Bank. In the meantime I had asked Mr. Olmstead to get for me as nearly as he could the exact amount of this float. He said he would have to get it from the bookkeeper, Mr. Wheeler's bookkeeper. On Friday morning when Mr. Wheeler came in I asked him if he had a list of these amounts, and he said approximately, and he and Mr. Olmstead were working on

(Testimony of O. L. Price.)

this matter until about eleven o'clock, before the Board actually met. Before the meeting of the Board Mr. Wheeler said that the amount was \$554,000. When the Board met I informed them of the purpose of the meeting, and asked Mr. Wheeler what he intended to do about these checks as they were returned. He started in talking about sales he was just about to make, the redwood sale, and we called him away from San Francisco; he thought he had a sale for this Trask timber, and undoubtedly he would very soon make a sale of the Telegram. I told Mr. Wheeler that he didn't have time to make sales, he would have to arrange to get that money quickly some other way; and I suggested to him that this was a time he would have to call on his family. He said that he couldn't talk to Biff, his brother, and the only one he could talk to was William, who was then in San Francisco. I asked him to talk with William, and he said he didn't like he was working on this redwood deal, which sale certainly would be consummated in a few days. After a considerable discussion—Mr. Olmstead had asked me what was to be done—I said we would pay no more; we would give him credit for no more such checks. Mr. Olmstead wanted to know what we would do about the checks that were coming back, and I told him if he can't take them up they will have to go in the usual course. He says, 'Do you realize what that means when this amount of checks comes back to this bank?' I says, 'Yes, I fully realize it, and we will take our medicine now.'

(Testimony of O. L. Price.)

The meeting adjourned after a considerable discussion. The next day was a holiday, February 12th, Saturday. On Monday morning [550] when we expected William Wheeler up here—we had asked for him to come—Mr. Wheeler came in and we asked where William was. He said he wasn't coming yet. We asked if he had talked with him; he said, 'Yes, I talked with him over the phone Friday, but he wouldn't come.' I asked him if he had told him of the difficulty he was in. He said, 'No, he couldn't talk over the phone.' And then from that time on we were working with Mr. Wheeler, Mr. Olmstead and myself, trying in every way possible to see if we couldn't raise a sufficient amount of money to meet this float.

Q. During the week following February 12th you think you were in constant touch with Mr. Wheeler in an effort to get him to do something?

A. Constantly.

Q. And during that same period I assume these checks which were in course of—were in transit—were gradually coming back.

A. They were coming back. I asked the auditor to advise me on it as rapidly as they came back, so I would know the amount.

Q. And when they were all in they amounted to what? A. Almost \$800,000."

The discovery referred to in the foregoing testimony put an end to the plan for the organization of a liquidating company. It had become evident that instead of raising \$750,000 in cash for the sub-

(Testimony of O. L. Price.)

sidiary it would be necessary to increase the cash capital so to be raised by \$800,000, and this seemed impossible.

It was next suggested that an effort should be made to sell the Bank. The witness while calling on Mr. Wright of the United States National Bank on another matter was asked whether or not the Pittock Estate was attempting to purchase additional stock of Northwestern National Bank so as to get control, indicating that if a sale was being considered the United States National Bank would be interested.

Thereupon the witness undertook negotiations with the officers of the United States National Bank but later found that Mr. Olmstead had already [551] begun to negotiate with the officers of the First National Bank. A tentative agreement was reached which specified a price for deposits and for the building of the Bank subject to an appraisal, and the question then considered was the amount of assets which could be turned over to the First National Bank to offset the deposit liability. Thereupon some of the junior officers were sent to the First National Bank with a list of principal loans which were examined and appeared to be satisfactory.

During these negotiations the indebtedness created by the McCormick Lumber Company returned checks was not disclosed, but as the transaction neared a final agreement witness felt it necessary to disclose the facts regarding the McCormick

(Testimony of O. L. Price.)

“float,” explaining that the Northwestern would of course diminish the fixed price to the extent of the assets required to be applied to offset the “float.”

These negotiations continued until about the last Sunday in February, 1927, when they were discontinued because of the demand that \$2,250,000 would have to be put up in cash in addition to the assets of the Bank, and because of the refusal to pay the agreed percentage on deposits or any except those which remained after the lapse of one year.

During this period the board of directors of the Northwestern National Bank was in almost constant session; and when witness reported the last demands the board concluded that inasmuch as two million to two and a half million would have to be advanced in any event, it would be better for the stockholders of the Bank to put up this money themselves and continue in business. In view of the rigid examination which had just been made and which had disclosed that the addition of a million and a half would be ample to permit taking out of the Bank's assets all criticized paper, the directors concluded that the addition of two million dollars would be ample to put the Bank in excellent condition, notwithstanding the addition to the frozen paper resulting from the McCormick “float.” For this reason it was decided that if two million dollars could be raised by the stockholders, the Bank should not sacrifice the earning value of the business by a



(Testimony of O. L. Price.)

sale but should continue the conduct of the business of the Bank.

Two methods of procedure were discussed. One was to organize a new Bank under the laws of the State with the two million dollars capital and to purchase the business of the Northwestern Bank, and the other was to put the money into the present [552] Bank in the form of an assessment and continue under the old charter. The latter plan contemplated an involuntary assessment on the stockholders if money could not be secured by voluntary subscription; and any involuntary assessment to raise two million dollars would require a finding by the Comptroller that the capital of the stock had been impaired to the extent of 100%; otherwise the assessment could not legally be enforced.

At the meeting of the directors just referred to, held late in February, 1927, the directors determined to secure subscriptions immediately for the two million dollars required whichever plan might be finally adopted; and almost the entire two million dollars was actually subscribed that same night for use in carrying out whichever of the two plans might be adopted.

At the conclusion of this Sunday night meeting the plan which was favored was that of organizing a new State bank, but when the board reconvened the next morning, the members having given serious consideration to the matter, came to the conclusion that this was not advisable. There was some doubt of the legal right of the trustees of the Pittock

(Testimony of O. L. Price.)

Estate to subscribe for stock of a new Bank, whereas they felt themselves authorized to subscribe for whatever might be necessary to protect the investment in the existing Bank. It was felt also that the McCormick "float" of \$800,000 would soon become publicly known and that the organization of a new State Bank would advertise to the world that there was a crisis in the affairs of the Bank; and it was thought that change from a national bank to a state bank would be considered a showing of weakness. The existing Bank was a member of the clearing-house and also of the Federal Reserve Bank and it would take some time to have the new Bank admitted to these organizations. There was an indebtedness of about a million and a half to the Federal Reserve Bank which would have to be paid at once if the present institution were liquidated.

For these and other reasons it seemed to witness that the better plan was to continue the operations of the present Bank, arranging for an assessment of 100%. The witness had confidence that most of the stockholders would pay their assessment voluntarily and some of the stockholders would be willing to advance enough to pay the assessment of those who could not pay at once, taking over the stock of these stockholders but giving them an option to repurchase within a year providing they could then pay their assessment.

After full discussion the board of directors reached the conclusion that the plan for continuing

(Testimony of O. L. Price.)

[553] the existing Bank and making a 100% assessment should be followed. Approximately one million dollars in cash was raised immediately and a writing was entered into under which those signing agreed to advance another million dollars. The local Bank Examiner, Mr. Crowley, was then called in and he outlined the manner of putting through the assessment.

On that same day and after the money had been raised, the board was called together, Mr. Olmstead presented his resignation, and the witness was elected president in his place.

In order to consummate the plan thus adopted, the board then requested the federal authorities to make another examination of the Bank so that the Comptroller would be in a position to certify that the capital was impaired to the extent of 100% and the Bank thus placed in a position to levy an assessment.

Thereupon an article was published in the morning "Oregonian" which told of the fact that the Pittock Estate had acquired a larger share of ownership in the Bank and that this would give the Pittock Estate a greater interest in the conduct of the affairs of the Bank.

Thereupon an examination was made of the Bank by Examiner Crowley and Chief Examiner Harris. These Examiners had considerable difficulty in convincing themselves that the assets were impaired up to the full 100% but they did complete their examination and make a report to this effect in

(Testimony of O. L. Price.)

order to permit the Bank to carry out the plan for a 100% assessment. Before this was done, however, a vigorous effort was made to interview the stockholders so as to persuade them to a voluntary assessment and thus avoid the necessity for a formal levy by the Comptroller.

The board of directors appreciated that Mr. Olmstead's resignation would cause some withdrawals of deposits and an effort was made at once to get into the best possible condition for such withdrawals, by calling in notes and getting clear of indebtedness to the Federal Reserve Bank. This was accomplished by the middle of March so that from then on there was nothing owing to the Federal Reserve Bank.

Presently the directors learned that there were rumors afloat of a defalcation in the Bank and efforts were made to explain this to people who had heard about it.

There was only a slight decrease in the deposits until the last four or five days before the [554] Bank closed. But there were no withdrawals sufficient to cause any alarm until the last four or five days. In the latter part of March witness went to San Francisco in order to discuss with Mr. Fleischhacker the question of the assessment on the stock held by Mr. J. E. Wheeler and Mr. Olmstead, which stock was hypothecated with Mr. Fleischhacker's bank at San Francisco. Witness also planned to go to Los Angeles to talk with complainant Ballin about the assessment on his stock.

(Testimony of O. L. Price.)

While at San Francisco witness also called on the Portland Dollar Lumber Company in the effort to collect a substantial amount of money owing the Bank, and also called upon the Southern Pacific Company and the Standard Oil Company and obtained a promise for an increase in their deposits.

On Friday of the week of this trip witness received a telephone call from Vice-President Skinner of the Bank saying that there were bad rumors afloat and that the town was being honey-combed with calls over the telephone about the condition of the Bank. He advised also that there had been some noticeable withdrawals although they were not then alarmed. After further telephone conversations witness decided on Saturday to give up his Los Angeles trip and return at once to Portland, which he did arriving home Monday morning.

There were no indications of trouble until about 10:30 when a crowd began to assemble in the Bank. Witness thereupon went to the United States National Bank and met with officers of that Bank and at his suggestion prepared a letter to the president of the Portland clearing-house asking for an immediate conference.

It was impossible to get this conference arranged until 3:30 in the afternoon, and by this time the Bank quarters were badly crowded with people seeking to withdraw their deposits.

The clearing-house after a meeting which continued until 5:00 o'clock, came to the conclusion that it could not get behind the Bank.

(Testimony of O. L. Price.)

The Bank remained open for the payment of depositors until about 6:00 o'clock in the afternoon and there were large crowds waiting when the Bank closed for the day.

At a subsequent meeting on the same evening with the officers of the First National Bank and the United States National Bank, an agreement was made by the terms of which these two Banks undertook [555] to assume and pay the deposit liability of the Northwestern National, provided they could be secured by a transfer of a sufficient amount of assets, supported by individual guaranties and backed further by the guaranty of the Portland clearing-house. This agreement was reported at once to the board of directors of the Northwestern National and it was the unanimous opinion that the agreement would have to be made and the guaranties given whatever sacrifice might be required, in order that depositors could be paid in full and without delay.

The offer of the two Banks was conditioned upon their approval of the sufficiency of the assets of the Northwestern Bank, to be determined by an examination made during the night following. Such an examination was begun by the officers of these two Banks about 10:30 or 11:00 o'clock that night and was concluded between 7:00 and 8:00 the next morning. The two Banks required, in addition to the transfer of the assets, that the one million dollars which had been advanced by some of the stockholders several weeks before in anticipa-

(Testimony of O. L. Price.)

tion of the proposed assessment, should remain in the assets to be transferred, and that the additional one million dollars theretofore agreed to be furnished by the stockholders for the purpose of assessment, should be paid in in cash immediately, and in addition that a guaranty of two million dollars be given to be signed by the Pittock Estate and the directors individually, and that the legal liability of the stockholders would remain unaffected. It was also stipulated that the Bank would be required to discontinue business and liquidate.

These conditions were acceded to and agreements and guaranties prepared and executed, and about 10:00 o'clock in the morning notices were posted that the deposits of the Northwestern Bank were unqualifiedly guaranteed by the First National Bank, the United States National Bank and the Portland clearing-house. In addition, statements were made to the assembled crowd be representatives of the three Banks, but notwithstanding these assurances, the run on the Bank continued that day and for two or three days thereafter.

Excellent results have been obtained from the subsequent liquidation of the assets of the Bank. The values thus demonstrated justified the opinion held by the directors that the Bank with the two million dollars additional capital advanced after the McCormick "float" was discovered, was in excellent condition.

"Witness, Edgar H. Sensenich, was an officer of the Northwestern National Bank from 1912 to

(Testimony of O. L. Price.)

1923, occupying the position of vice-president at the time of severing relations in 1923.

“Whenever a borrower established a line of credit, the handling of the loans to that borrower usually worked into the hands of some one of the officers. This was true as to any substantial line of credit. In this way the Wheeler and Telegram lines fell to Mr. Olmstead to handle.

“From the time of Mr. Pittock’s death in 1919, and continuing until 1923, the board of directors each year was getting sharper and sharper in the handling of loans, urging the officers to be more active in the collection of the loans which had become slow or bad following the war period. There is no question that a more vigorous policy was constantly being developed.” [556]

PRICE upon cross-examination testified (1054) among other things that the liquidation had been in charge of Mark D. Skinner, one of the officers; that he himself was appointed liquidating agent by virtue of his position as president but had not been active in the liquidation but had appointed Skinner as his deputy. That the first capital stock of the Bank as of the time witness was attached to it was \$1,000,000, with \$250,000.00 Surplus, and thereafter the stock was increased to \$2,000,000.00 and they sold stock at \$150.00 per share and \$400,000.00 went into Surplus and they charged off to Undivided Profit account certain amounts. That all of the stockholders did not contribute to the



(Testimony of O. L. Price.)

\$150.00 amount, and that just left those who didn't subscribe to hold the same certificates they had before and the others took additional certificates practically the same, because whoever took the additional stock took it as they found the stock then, at \$150.00 a share. That what he meant by "war period" was the time the United States entered the war, in 1917, until the signing of the Armistice November 11, 1918, but that there was a great money inflation following the war as there was during the war—that in speaking of the war period which he said affected his Bank was the time we were in the war, to the signing of the Armistice. Witness' attention was called to the testimony of Mr. Sensenich, and that he had testified with respect to the condition of the slow loans and frozen assets of the Bank during the war period, that the condition continued the same down to the time he left the bank in 1923, and he stated that that was what he meant as the period of deflation, and that it still continued, according to his views, as far as the Northwestern National [557—205] Bank was concerned, for a period of seven years. That he did not recall any suggestion of change in management of the Bank prior to 1922, and that prior to the leaving of the Bank by Mr. Sensenich in June, 1923, they had had that point under discussion, as well as many others in relation to what might be to the best interests of the Bank; that the first discussion of change in management was in the fall of 1922, but that was not taken up di-

(Testimony of O. L. Price.)

rectly with the board of directors; that he discussed the matter with various members of the board as to what might possibly be for the best interest of the Bank, and this was following the time when some of the loans became slow and they had to cease paying dividends; that it was finally concluded that change in management was not necessary or advisable—that these matters were discussed with Mr. Charlton, Mr. Metschan and Mr. Spalding, he was not certain that he had talked to Spalding, but remembered discussing it with Charlton and Metschan. That in 1923 it came up again, but it was finally determined that Olmstead was the proper man for the place; he didn't recall having discussed it again until the meeting of June, 1926, the time with the Comptroller at Washington. That the loans he spoke of as affected by deflation were renewed from time to time, but continued down to the period of deflation and the executive committee thoroughly discussed these matters, and that the high peak in loans adequately secured was about \$15,000,000.00. (R., 1060.) When his attention was called to the published calls, say commencing in 1922, the witness answered that it must be remembered that they were at their lowest at that time, because that was the deflation period that he spoke of, that the [558—206] loans he spoke of were always carried in Loans and Discounts, as the statements were made and amounted to the same thing he referred to when he spoke of Notes and Discounts. That all of their

(Testimony of O. L. Price.)

profits were charged up to take care of losses determined by the Examiner after they ceased to pay dividends in 1920; that the executive committee met every Tuesday and discussed loans and renewals, then passed their conclusions on to the board, who passed on them, and they were recorded at their regular monthly meetings. The witness was not pleased with the sale of the Menefee and Standifer and Jones stock to Wheeler because he thought that that sale interfered with his negotiations to sell the Bank. It did not occur to his mind as to the fact that there was engendered opposition between the element of the presidency of the Bank, and the witness representing the Pittock Estate at that time. (1063.) That he and Olmstead were always extremely good friends and as far as he knew that friendship still existed, but that his eyes had become entirely opened in the last few months,—were apparently not at that time (1923) that he had every confidence in all the officers of the bank; that he never figured at any time that he had control beyond the Pittock Estate, the Pittock heirs, handled by himself and Mr. Piper—that that was the only stock he ever attempted to sell, and didn't want any effort to make any sort of combination because he didn't think that was necessary, and he didn't suppose any was being made against him. That Wheeler had had very extensive transactions with the bank prior to 1923, and that he knew generally the condition of affairs, that they were discussed often; that Olm-

(Testimony of O. L. Price.)

stead had told him where Wheeler got the money [559—207] to pay for the stock, at the same time that he told him of the purchase, that Wheeler had bought the stock and had borrowed the money from the Anglo bank with which to pay for it, and had paid the sellers cash. That between the years 1923 and up to the first Otto report in August, 1924, they were anxious to have the Wheeler obligations paid although at that time they thought they were perfectly good, but he never discussed the matter; that there were none of them that were anxious to loan Wheeler money in recent years; that the Wheeler loans were criticised by the Examining Committee in 1924, and the Bank didn't want to lend him any more money, but wanted him to clean up his obligations, and it was at that time that Wheeler and his line were considered to be in charge of Mr. Olmstead, and that he Olmstead had handled it from the start and was continuously reporting what success he was having to the board, and there were criticisms made of the Wheeler loan in 1925; that most of the conversations they had were with Olmstead and not with Wheeler, as to the condition of the Wheeler loans, and they relied principally upon the reports which they got from Olmstead each week, although some of the directors may have talked directly to Mr. Wheeler—the witness did not recall that he had talked to Wheeler about it until after February, 1927, and when he talked to McIntosh in June, 1926, about the change in management, he had a copy of the last

(Testimony of O. L. Price.)

examination, the letter, before him and they asked just what he meant by that and he said of course he meant a change in the presidency; the witness did not recall that he said why, and could not recall any conversation with Metschan, or Stewart, that he had had as to why he recommended the dismissal of Olmstead, but presumed it to be because of the unsatisfactory showing that the [560—208] Bank had made in the last few years. Witness did not recall whether or not he had communicated to Olmstead what the Comptroller had said about the change in management, but of course Olmstead had seen the criticism. That it would have been somewhat embarrassing to him to have spoken about it, since it had been decided that it would not be wise to make a change as Olmstead was thought to be the person who could more readily get the subscription of \$37.50 per share out of the stockholders, and to assist in working out the matter, getting the new corporation worked out; that they were anxious to have Wheeler pay up, and the Wheeler line was one of the objects of criticism as having been carried too long at that time. That the letter of April 26, 1926, was the letter to which he referred, and as to what he meant as written by the Comptroller, and that the witness hesitated to speak about the matter, and did not recall any of the directors speaking to Olmstead about it, as they did not want to discourage him in putting his full heart in the work in regard to the corporation. Witness did not remember

(Testimony of O. L. Price.)

whether he wrote a letter or sent a telegram back to Washington stating that it would be all right for Mr. Olmstead to go ahead and see the stockholders. That they returned by way of the Canadian Pacific and took a little longer, and were working at all times as soon as they got back, which was the first part of July or the latter part of June. That Mr. Stewart came directly home, and could report what they did at Washington before they did and then Mr. Olmstead started in to see the stockholders, witness presumed that was instructions, in a way, but stated of course the main thing, the big thing, was to [561—209] get the \$37.50 from Mr. Wheeler; and that was working along until the examination in September, and they went to San Francisco to meet the Comptroller on December 20, 1926, at which time they met Mr. McIntosh and Mr. Harris, who had with them the September 21, 1926, report. The witness did not remember that the question of a change in management of the Bank was discussed in that conference; that when they came back from the December 20th visit, they reported immediately to the board concerning the \$1,500,000.00 to be taken up. This was the latter part of December, and in the meantime they had made provision to take care of the stock; some of the Pittock heirs had agreed that they would buy from those who did not want to pay the \$37.50, paying them a limited amount, \$120.00 or \$125.00 per share, so that they could get behind those who did not want to put up the \$37.50.

(Testimony of O. L. Price.)

That prior to the first of January, 1927, he did not recall that anyone had put up any money, but that one or two had sold their stock and their may have been some reason that they didn't want to put it up, was the reason they sold, as he presumed, and he referred to the Lindner sale but did not know of anyone else. That on or about the 8th of February, 1927, it was discovered that the \$37.50 plan was impossible and couldn't be worked out on account of finding the float, and they had to raise the \$1,500,000.00 for the plan, and when they discovered this, in addition to the \$800,000.00 more in cash, made it impossible; that the whole take-down was gone as to their program with the Comptroller, and it was found that the money required would be the same as they had originally planned and what the Wheeler float amounted to. (R., 1075.) [562—210]

That on the Sunday night or Monday, before the first of March, 1927, they agreed to get together and put up \$2,000,000.00 because the deal with the First National Bank was off on that Sunday, and the next day Olmstead resigned, and witness fixed the meeting as in the evening of February 28th, Olmstead resigned March 1st, 1927. And that the meeting when they discovered the float and involving the instructions given not to carry any more Wheeler checks was February 11, 1927. That Wheeler was present, also Olmstead, at the February 11 meeting, and Wheeler told the witness that the amount overdrawn was \$554,000.00 and

(Testimony of O. L. Price.)

Olmstead told him that it was more than that, and told Wheeler he would have to get the money; that that was the first time the board, also, had told Wheeler he would have to get the money, for the float and there was no previous occasion when the board had told Wheeler that he would have to pay up, and the first time Wheeler had ever appeared before the board, that he knew of. That witness became manager of the "Oregonian" newspaper on May 1, 1927, and was on the board of the Oregonian Publishing Company before that. (1078.) That he and Olmstead worked together with the negotiations of the First National Bank and the United States National, Olmstead with the First National and the witness with the United States National, and told each other day by day how they were succeeding; the directors knew what they each were to do. That Olmstead's proposal to the First National Bank on a 3% basis continued until the witness told Harry and Elliott Corbett in Harry's office about the float, and they were to take the building with the Bank, if that was necessary. That Mr. Pittock had provided in his will that the stock of the building [563—211] should not be sold unless the bank stock had previously been sold, or unless both were sold at the same time; but that conditions did not exist in 1927, due to the fact that it had been eliminated in the previous building transaction that Mr. Olmstead described in his testimony, and the Pittock Estate had sold its stock in the building company to the Bank so



(Testimony of O. L. Price.)

there was no question that could be set up over the Pittock Estate matter that the First National Bank could have said it couldn't take the building; that that was owned by the Bank at that time. (1081.)

AT THE REQUEST OF MR. HART IT WAS HERE STIPULATED THAT THE RECORD SHOULD SHOW THAT WHEN OLMSTEAD AND WHEELER WERE INDICTED BY THE FEDERAL GRAND JURY BECAUSE OF THE TRANSACTIONS OF THE RECEIPT AND GIVING IMMEDIATE CREDIT FOR A LARGE VOLUME OF McCORMICK LUMBER COMPANY CHECKS, WHICH CHECKS WERE RETURNED UNPAID, AND THAT BOTH OF THESE MEN WERE LATER TRIED AND CONVICTED ON THAT CHARGE IN THIS DISTRICT. (R., 1082.)

Thereupon PRICE resumed the stand for cross-examination and further testified that the First National Bank finally required that in case they purchased the Northwestern, one of the things to be done would be to put up \$2,250,000.00 in cash, by the stockholders, against which they might charge any rejected assets, and that was in addition to not allowing anything on deposits unless they were able to hold deposits afterward for a year. Upon being questioned as to the pool arrangement affecting other stockholders who would not participate in the raising of the \$2,000,000.00 and

(Testimony of O. L. Price.)

what was to be done, the witness read from Clause 5 of the paper [564—212] produced at the trial in words and figures as follows:

“Deposits to be made in Paragraph 3 hereof shall be made on demand. The aggregate or so much thereof as may be necessary shall be used for the payment of the assessment of stock of stockholders who shall fail or refuse to pay their assessment as required by law, and any stock so purchased shall be held for the account of the person named in Paragraph 3 hereof in the proportion that the amount subscribed by each bears to the total subscription of \$927,600.00.” (1085.)

Witness stating that this only referred to the stockholders mentioned in Paragraph 3 who had put up the money, but refers to any stock or shareholder who shall refuse or fail to pay the assessment; that no assessment however, was ever made. That there was no writing in reference to the pool as to any other stockholders except those named, and there was no writing in relation to other stockholders whereby they became members of that particular pool, it was just determined afterwards among themselves that they would be willing to do that as an inducement to get them to come in on the voluntary assessment, as to those signers who were read into the record when Mr. Skinner was on the stand. That the only time any suggestion was ever made to any of the stockholders about a payment of any amount, was in trying to get Mr. Wheeler's stock into shape and he didn't want to turn it over under

(Testimony of O. L. Price.)

the arrangement witness suggested, and witness suggested that if he were not willing to do that, they might give him a nominal sum, say \$10.00 a share for his stock—that there was no other stockholder to whom the \$10.00 per share offer was made. (1078.)

That two other large depositors of the Bank outside of their own group referred to by the witness, brought to the witness the rumor of the defalcation, and witness had told them of the fact and what had been done to provide money for protecting the depositors. That [565—213] the agreement read into the record by Mr. Skinner expressed the whole thing, in writing, and they wouldn't release the statutory liability of the stockholders, that that was held in addition to the guaranty, and besides that they wanted their undertaking to these two particular Banks for whatever might be found wanting after they got through with whatever they were doing.

That the witness is a lawyer and was admitted to practice in 1900; that the first information he had of the total amount of the float transaction was during the criminal trial. He remembered a figure involving something like thirteen millions of dollars, during the period which was in question, but also recalled that there was a considerable amount of these transactions that were redeposited, and a very large amount of returned items, and also some that were paid. Mr. Morden went with him to the clearing-house and was there with him all the time of the first meeting, when he was explaining condi-

(Testimony of O. L. Price.)

tions and endeavoring to get help. That the rapid growth of the Bank, the peak of the transactions, noticeably commenced in 1914 and ran up to 1918 or possibly 1919. Witness was asked if he recalled along about May 25, 1926, before he went to Washington, that the assets objected to ran to an amount of three million and some odd thousand dollars, but stated that he did not recall the amount of assets that were objected to, he knew that in all the reports there were many items that were criticised, and when his attention was called to the Harris report of March 5, 1927, wherein Harris pointed out to him specific losses of \$634,500.00, witness answered that the report would show that, but he had forgotten, that it was a considerable amount, but [566—214] that he didn't remember the amount; that it was very likely, as overdue paper often amounts to considerable where people were getting renewals on it. His attention was then directed to the Harris report and the Wheeler lines outside the float, as far as estimated losses ran, \$1,496,000.00 and some odd, and he was asked whether he recalled that amount outside the float of \$800,000.00, and he stated that the total estimated losses were approximately two million dollars. The witness was asked if, when Harris got down to the place where he was computing the Bank's total condemned assets or total criticised assets, he took a total of practically two and a half millions of money, and he answered "Practically. He was making—he was preparing for this 100% assess-

(Testimony of O. L. Price.)

ment which we requested.” Witness was asked, “And you recall, don’t you at that time, that Harris showed that Capital, Surplus and Undivided Profits, applied against what he computed, left the Bank insolvent by several thousand dollars?” and he answered that Harris had made that provision. He didn’t know anything about Complainant’s Exhibit 11 or Exhibit 60. (1095.)

Upon redirect examination of this witness, he stated that at the time of the Harris examination of March 5th there had already been put up a million dollars and another million had been pledged, by him and the stockholders and directors acting with him, before the examination of March 5, 1927; that it was the purpose of the Harris examination of March 5, 1927, to provide for a certificate of impairment of the capital so that they could make an involuntary assessment. That he presumed the Bank might have had an opportunity for enforcing the Wheeler loans, but that they did not think it advisable [567—215] to go to that extent by bringing suit. That Olmstead was constantly being urged to get money from Mr. Wheeler and to get payment of the notes, and he, Olmstead, was very active indeed in trying to make collection, and in doing so, in trying to assist Wheeler in making his various sales. (R., 1097.)

Upon recross-examination (1098) witness said he wanted to think that Olmstead’s intention in his deal with Wheeler was to work out the Bank, as it

(Testimony of O. L. Price.)

was "awfully hard for him to believe that Mr. Olmstead, in whom he had the greatest confidence, and one of his best friends, would have any other intention." The witness recognized the letter sent on March 18, 1927, to the Comptroller—that it bore his signature and that of Charlton, Metschan, Stewart, Skinner and Collins. That there never was any involuntary assessment really levied, but it was the intention to make all preparations for an involuntary assessment and they wanted it if they fell down on obtaining the money on a voluntary assessment,—that is, if the stockholders did not contribute enough, then they wanted to be in position to go ahead and enforce it. That the two million dollars that was put up prior to Harris' report of March 5th, 1927, involved the item on the March 2, 1927, entry of \$926,600.00; that the book entry was \$7,500.00 over and was part of the two million that had been arranged for, and that included the first million. That the witness *believe* that the paper having regard to the other million was signed on the 2d of March, 1927, the date of the entries, but was not certain of the date. [568—216]

#### TESTIMONY OF CHARLES H. STEWART, FOR DEFENDANTS.

CHARLES H. STEWART testified that he was one of the vice-presidents of the Northwestern National Bank and had been such vice-president since January, 1921, up to the time of its discontinuance

(Testimony of Charles H. Stewart.)

in the banking business. That he had been with the Federal Reserve Bank in San Francisco, and formerly was a state bank examiner, and that he had worked in contact with a great many banks and was a man of wide experience, and had a full knowledge and familiarity with the banking business. That he was "contact officer," with the other officers and directors, of the Northwestern National Bank, and participated in the handling of slow or frozen assets, from 1922 to 1926 that the board of the Bank was just about as active as a board of directors who were not active officers of the Bank, could be. That they met regularly, their meetings were well attended, and they were in and out of the Bank almost constantly. That the executive committee met practically every week, and went into things very closely, although it was not a formal type of meeting. That the directors were unusually active, unusually energetic, unusually diligent, during the entire period under consideration, in the performance of their duties, and gave consideration to the problems of the Bank went out and investigated various securities, went and investigated different pieces of property and made recommendations as to what should be done about them. That Mr. Met-schan was particularly active in going down and looking over the Merchant's National Bank property and that the executive committee functioned on loans in connection with the larger and active accounts, and passed [569—217] lines of credit for the guidance of the officers to make loans to

(Testimony of Charles H. Stewart.)

these particular lines, and the larger lines of credit were established by this executive committee. That his contact with the Examining Committee was only in their investigation of loans, because that was what engaged him in the Bank, but he thought the Examining Committee met with regularity twice every year and spent a considerable time in the Bank, their examination being under the guidance of the auditor, and clerks furnished by him, and they went at their work very, very thoroughly. That they used to take the loan drawers, at the time, and take them upstairs in the directors' room and go through them, and ask for the collateral supporting each loan, and that their examinations lasted over periods of ten days, and they were very conscientious but that they could not be expected to take hold of an adding machine and list thirty thousand accounts in the Bank, that they were not technical bankers, but these three gentlemen had been directors in the Bank long enough and members of the executive committee and examining committee, that they had a very good idea as to loans and credits. That he was certain that the minutes would probably reflect the proceedings as far as definite action was taken, and that the corporate record reflected all the activities of the board of directors, but that the discussions lasted for three or four hours and could not very well be recorded on two or three pages in a minute-book. That further than that there were a great many not full meetings of the board, but a great deal of dis-



(Testimony of Charles H. Stewart.)

cussion as between the directors and officers that were not had at any formal meeting. That the board of directors were very active and very conscientious, in his opinion, [570—218] and they were in the Bank at other times than meeting times. That there never was a known impairment of the capital stock, surplus or undivided profits, and he didn't think there was ever an Examiner's report except the last March 5th report, 1927, that indicated an impairment. That he thought there was one letter read into the evidence from the Comptroller wherein he suggested something about an impairment, but his Examiner's report did not show an impairment and if there had been an impairment of capital, it would have been incumbent upon the Comptroller to assess them immediately, and he never suggested an assessment—that is statutory, he would not have any option in the matter, if a bank's capital is impaired the Comptroller must levy an assessment—and he didn't think that any Examiner's report during the time he was there showed any losses that were not properly charged off at a called meeting of the board of directors. That there never was any suggestion, prior to March 5, 1927, that an assessment might be made. That he thought there had been more slow loans and losses in Banks in the United States since 1920 than there ever was in any one period, and consequently more Bank failures and assessments and everything else. That there were two years in the history of the Northwestern National Bank when it was rated as

(Testimony of Charles H. Stewart.)

the most rapidly growing bank in the United States, but he thought the Bank of Italy had subsequently taken the palm from them. Witness didn't give the figures exactly, but believed that in 1915 the Northwestern had \$5,000,000.00 deposit and that in the two successive years thereafter it practically doubled. That it ran up to \$28,000,000.00 deposits in 1920, which of course was a period of rapid [571—219] growth because commodity prices were very, very high and if a man owned any kind of merchandise the value thereof doubled, the sale price doubled, and his banking account increased and the Bank deposits in the United States as a whole increased very rapidly, in fact, they inflated during that period. That the Northwestern Bank grew very rapidly, more rapidly than was the average growth, and that it was very flattering at the time, but he thought it was a very unhealthy growth, because when deflation came and the recession in deposits started, and that also was very general, the recession in the Northwestern was very large, more heavy than was the average recession of deposits during that period. That in June or July, 1920, when things began to smash, the Northwestern Bank had \$19,000,000.00 in loans and \$28,000,000.00 in deposits, and in two years' time the twenty-eight million deposits shrank to \$16,000,000.00, the loans necessarily contracted and they were forced to borrow money from the Federal Reserve Bank, with the result that unquestionably the proportions of slow loans in the Bank was

(Testimony of Charles H. Stewart.)

greater than could normally be expected in a bank with \$16,000,000.00 deposits, because in the rush to take of the \$12,000,000.00 loss in deposits that occurred in two years' time, collection had to be forced where it could be forced, and the finest and best notes that were in the Bank were necessarily called to pay off these deposits to what they were in 1922. That the Bank found itself a Bank with proportionate frozen loan account of a Bank of \$28,000,000.00, but with actually only \$16,000,000.00 deposits earning capacity, to absorb the losses that developed in a bank of \$28,000,000.00, and that the condition that confronted them was a very serious one. [572—220]

That the officers and directors met the situation with what success that their ability would permit, that they worked hard at it and that they succeeded. He didn't think there were many moves made wherein they made any very grave error, that looking back a serious mistake was made, they knew, in advancing money to the Dufur Orchards but they had every reason at the time to believe that it was a proper move. That they succeeded from that period in getting back to \$20,000,000.00 deposits, and were making money, not as much as they should have made because of a large amount of assets which were not producing income. That Cash Items consisted of checks drawn on an outside or a local Bank on which money had been advanced, or checks cashed after the clearings, on other Banks in the same city, and just as many were cashed on out-

(Testimony of Charles H. Stewart.)

side places, as inside. That all of those items were lumped in one or two accounts, either exchanges for clearing-house, which represented items drawn on Banks in the city of Portland, which had been cashed but too late for clearing, and the other was Cash Items. That the only effect of figuring out Cash Items against Reserve would be that if they were given credit for these checks, then they would be required to keep a greater reserve because the deposits would have increased by having given credit for those checks; so the only effect or reserve of Cash Items, would be that they would be required to keep more cash in the Federal Reserve Bank. That the Item of Cash, or Cash Items, or anything of that sort, does not enter into the figure of the Federal Reserve Bank at all, that the amount of the reserve is gauged by the deposits. [573—221]

That with respect to the loan to Wheeler the Bank's records show that in 1925 an additional loan of \$150,000.00 was made to him, and that witness was present at the meeting at which that loan was authorized; he couldn't remember to what extent the question of making an additional loan was discussed by the members of the Committee, but testified he knew that if Wheeler applied for additional credit, there would have been considerable discussion, as he knew there was in this particular instance and he remembered what the terms were himself; that Mr. Wheeler offered the Bank what they thought was a very desirable bunch of collateral, which applied to the new loan as well as all

(Testimony of Charles H. Stewart.)

other loans direct and contingent that he might have had in the Bank, and it was thought to be good business to advance the additional money and get the excess of collateral. That that was the exercised judgment of the members of the board and of himself as a director of the Bank, at the time the loan was made, and he knew that to be so.

“A. Well, in the first place, of course all loans that were made were reported to the Executive Committee for their approval or disapproval, subsequent to the time that they were made, but the Executive Committee, in order that they might have something to say about the loan before it was made, on all of our larger accounts and active accounts, passed lines of credit for the guidance of the officers, the authorized loan officers, to make loans to these particular lines up to a certain fixed amount. I think we went through to the point of establishing lines of credit even though they had not been asked for, on the possibility that they might be, and it would be inconvenient for us to tell them we couldn't do business until our Executive Committee got together; we passed lines down as low as \$25,000 to all customers that we thought there would be the prospect of an application for credit from, so that if such customer came in, unknown to him he had already been passed [574—222] on or before he made his application for loan. And of course the larger lines of credit were established by the Executive Committee.”

(Testimony of Charles H. Stewart.)

Witness collaborated the testimony of Price as to the plan of forming a subsidiary corporation to take out from the Bank's assets a million and a half dollars worth of slow paper, and stated that he was one of the committee sent to Washington to interview the Comptroller, and later accompanied Mr. Price to San Francisco, in December 1926, to interview Mr. Harris and the Comptroller. That he didn't believe there was any delay in putting the plan suggested by the Comptroller into effect, and there was no delay except that someone had to interview the stockholders and obtain their consent to the plan, and the directors felt that they would be in better position to get that consent to the [575—222-a] \$37.50 per share plan, if they could say to them that having done this the bank would be clean and would then meet the approval of the Comptroller; that while they did not have the final consent, Mr. Olmstead interview a great many people, but they could not go to the stockholders who were not particularly cognizant with the affairs of the Bank, and make this assurance until they had the definite approval of the Comptroller for the plan, and they didn't get that before the meeting in San Francisco with the Chief Examiner there, when the witness and Mr. Price went down there; that they came back to Portland with that consent and ready to complete the transaction as rapidly as possible. They got the Comptroller's consent about December 20th, and they were given until April 1st, 1927, to complete it, at least a period of months,

(Testimony of Charles H. Stewart.)

and that Mr. Price's understanding of the matter was the same as his. That there was nothing astonishing or alarming about a "float." That a "kite" is an unholy float, but that anywhere up to around \$2,500,000, or \$3,000,000.00 would be a normal, proper and unavoidable float in a Bank the size of the Northwestern; that a kite is a float which is created for the purpose of getting credit on a float. Then by question and answer the witness testified as follows:

"A. Now the conventional type of float is not carried on as by somebody inside the bank and somebody outside the bank, but some individual that circulates checks around two or three banks and he gets his deposit which is created in one Bank through a check drawn on another Bank, and then he floats one into that Bank before the check drawn on it gets through, and he floats up an available credit for his use without actually having anything in it; that is the conventional kite; and I have testified or referred to this transaction in our own Bank as a kite, because it accomplished the same purpose. In other words, a credit was created through checks that were being floated that were not ultimately paid, but it differs from an ordinary kite in that it isn't one individual doing business in two or [576—223] three Banks, but it was carried on inside and outside the Bank . . . it is customary for a depositor of a Bank to get credit on his outside checks; it is the excep-

(Testimony of Charles H. Stewart.)

tion when he does not. Of course he wouldn't get credit—the mere fact that he was depositing in a Bank would not entitle him to credit in a large amount unless the people to whom the check was referred believed that everything was all right, that he was good for it." (R., 1120, 1121.)

Witness admitted that Hoyt told him about July 23d that the Wheeler items were coming back, but he had no recollection that he told him again, and was inclined to believe that Hoyt was mistaken in the fact that he told him of any accumulation when he (Hoyt) testified that he had told witness on July 23d of a considerable amount of items that had been returned on the Wheeler account, that it was his remembrance that Hoyt did tell him and that he went immediately to Olmstead with it and informed him. Witness couldn't remember the details of his conversation except that Olmstead gave him a very satisfactory explanation of the situation, which had to do with a bond issue on either the McCormick Lumber Company or the Trask, he didn't remember which. That Olmstead explained that the bond issue had been negotiated, and witness believed that the money was to have gone to William Wheeler, and Jack Wheeler had been authorized to draw but for some reason his draft or checks had gotten there too soon and were returned; that the money was available, and he had obtained the credit and everything was all right. That the drafts were taken up at the time, he couldn't say as to the checks, but



(Testimony of Charles H. Stewart.)

that they were removed from the Bank to his satisfaction.

By question and answer the witness told in his own words of his subsequent knowledge as follows:  
[577—224]

“Q. Now it was testified to by Mr. Hoyt that again in August he called your attention to the fact that there was returned checks, and said he gave you the amount. What is your recollection of that?

A. I don't believe he testified to that. I think he said were items in a certain amount, because if he did testify he gave me the amount I think he was mistaken, because if he had given me that amount I think I would remember it. It was an impressive amount. I think Mr. Hoyt probably did mention the matter to me some time subsequently that checks were back from Wheeler and I believe I am right in that, because he was doubtful himself; because I subsequently talked to Mr. Hoyt, and he said he was not certain that he had fixed any amount. My reason for believing he didn't is that I think I would have remembered it, it was an impressive amount.

Q. What information did you have during the period from July or August on, until the early part of February, with reference to the return of McCormick checks?

A. Well, I should say that during that period I knew of instances of McCormick checks, or Wheeler checks—I don't know what they were stated to

(Testimony of Charles H. Stewart.)

me—having been returned three or four times, probably from Mr. Bates and Mr. Hoyt, and I had discussed that matter with Mr. Olmstead. Mind you, these would be very widely separated times. He has explained to me that he was drawing against confirmed credits that were confirmed by wire, and was some slip up that was taken care of, and explained it to my satisfaction at first.

Q. And why do you say at first?

A. Because later I became suspicious something was under cover.

Q. When were your suspicions aroused for the first time, and what caused them to be so aroused?

A. Well, in February, early February; and I—

Q. February, 1927?

A. 1927. And looking backward, if I may digress, I have an idea that that was due to the fact that Mr. Wheeler was in San Francisco, and that his man up here didn't function quite as smoothly as he did. Because very apparently checks in large amounts began to come into the Bank along at that time, and I think probably Mr. Bates got alarmed about it, and came to me, and I asked him if this had been happening, and he had some considerable amount of Cash Items. I asked him to go to Mr. Horstman and get me a list of items not in Cash Items, but items that were outstanding in that account. When I got that list I felt something was wrong.

Q. And did you go to Mr. Price?

(Testimony of Charles H. Stewart.)

A. I talked first with Mr. Skinner, and we together talked to Mr. Price. I think Mr. Skinner had got some kind of an inkling of the same thing.

Q. You heard the testimony of Mr. Price as to what—as to the conversation between you on the subject?

A. Well, I don't remember the definite conversation. I know that I gave Mr. Price to believe that I felt something was wrong.

Q. Prior to this occasion in early February, Mr. Stewart, did you at any time have any intimation of any continued practice of the deposit of McCormick checks drawn for immediate credit, and the return of these checks unpaid? [578—225]

A. Oh no; I didn't know certainly over a period of eight months, until right at the end of February; I hadn't had my attention called that there was even a check returned—my attention was called to it three or four times during the period of eight months, and that was not a matter of any suspicion or alarm to me that a man's checks might come back.

Q. Was there anything occurred at any time during this period that created any suspicion in your mind as to the integrity of any executive officer of the Bank?

A. I never entertained such a suspicion until the time that I related, when I got that list, final list. Before that I didn't know what I suspected, but I felt uncomfortable.

Q. You have given us an explanation of the ac-

(Testimony of Charles H. Stewart.)

count called 'Cash Items' in the daily statement, but I want to ask you to go one step further and tell us how that account might vary in total amount, and for what reasons?

A. The injection into the business right at the closing time of items too late to collect." (R., 1123-24-25.)

The witness then continued to testify that his attention was never called at any time during the Bank Examiners' visits to any irregularity or suspicion of irregularity with reference to accepting checks or Cash Items, and stated that the Bank Examiner didn't find out about it any more than he did. That he participated in the discussion of a state Bank, that he didn't know that he had advanced reasons for or against the adoption of that plan at a board meeting, when it was first suggested, that the directors were in considerable distress at that time and something had to be done, and this plan seemed a way out, that it more or less had the approval of the men who were assembled in the office that night, but the next day when they came in, witness was entirely of the notion that it was not a feasible plan and he argued it to the Board that he didn't think they should do it; that Mr. Price seemed of the same opinion, that he had arrived at the same conclusion; that their reasons against it were that they were up against recapitalization of the Bank, it didn't make much difference [579—226] whether they formed a new Bank or whether they injected new money into the old Bank.

(Testimony of Charles H. Stewart.)

That they had to furnish capital and take over assets and assume the liabilities of the old Bank eliminating assets that would offset capital and surplus, and the chief thing to him was that they were trying to avoid publicity, that they didn't want people talking about them; that it was the conclusion of all of them that to switch a Bank the size of the Northwestern to a state Bank would have required explanation to 30,000 people, whereas if they got by with a voluntary assessment nobody but the stockholders need know, and even if it came to an involuntary assessment and were forced to publish notice for the sale of the stock for non-payment of assessment, the proportion of people that would read those little advertising notices was very, very much less than those who would know of it if the Northwestern switched over to a state Bank over night. That they were desperately afraid of rumor, and felt that publicity attached to the float was something that they couldn't stand, because they knew they were in distress; that they were at that time borrowing from the Federal Reserve Bank a million and a half dollars and if they switched to a state Bank they would have lost their membership in the Federal Reserve Bank—that they were borrowing on 15 days' time which put them up against the necessity of paying these various notes off as they matured, as well as sacrificing the source of further borrowing in case there should be some reaction to the plan, so they changed

(Testimony of Charles H. Stewart.)

their notion and decided on the assessment of the stock, which didn't prove successful, but witness didn't think then and still didn't think that they made a mistake. He didn't think any of them wanted to go [580—227] ahead after the meeting that night. (1128-29.)

TESTIMONY OF FRANK C. BRAMWELL,  
FOR DEFENDANTS (IN REBUTTAL).

In connection with this testimony of the witness Stewart, FRANK C. BRAMWELL was called in rebuttal and testified as follows:

“Questions by Mr. BRISTOL.

Mr. BRAMWELL, in 1927, in the month of February, 1927, what office did you hold in this state?

A. Superintendent of Banks.

Q. Would you be the person before whom ordinarily application would be made for the organization of state institutions and trust companies taking over national banks or any other institution?

A. Yes, sir.

Q. You may state whether or not, and if so at what time, you ever had any conference with Charles A. Stewart, of the Northwestern National Bank?

A. Yes, I had a conference with Mr. Stewart.

Q. Do you recall, as near as you can, for the Court's advice and information, when it was, and tell him what took place?

(Testimony of Frank C. Bramwell.)

A. I am not prepared to state the exact date, but it was just prior to the time the Northwestern National Bank was having difficulties.

Q. Do you recall whether it was before Olmstead—we have it here in evidence that Olmstead went out as president March 1st, and Mr. Price went in as president, I think, on that date. Now was it before or after that?

A. My recollection is that it was very shortly after Mr. Olmstead resigned, practically at the same time, I think.

Q. What took place, please?

A. Between Mr. Stewart and myself?

Q. Yes.

A. He got me on the telephone one morning, at my residence, and asked me if I would drive by his place and bring him over to town. I told him that I would. When he got in my car he told me that they were endeavoring to untangle the affairs of the Northwestern National Bank; that in discussing the matter they had practically decided to convert the national Bank into a state Bank, and asked me if I would be agreeable to this program, and if I was, that they would like to obtain a charter for the new Bank, without any delay. I asked Mr. Stewart just what the program was, and he said that the intention was to convert to a state Bank, an institution under the name of the Northwestern Bank, with a stock of approximately \$2,200,000. I think was \$2,198,000. He had a slip in his hand, and showed me just what the figure

(Testimony of Frank C. Bramwell.)

was. I recall that they were approximately \$2,200,000, and that this amount had been subscribed by the directors and stockholders, which would constitute the capital of the new Bank, and that the state Bank would take over the deposit liabilities and all of the assets of the Northwestern National Bank, as an offset to that amount; that would leave the state Bank with two million capital, and about \$200,000 surplus. He asked me if I would expedite the matter and issue a charter immediately upon application. I told [581—228] Mr. Stewart that I rather hesitated to issue a charter unless he had a proper amount of assets in the Northwestern National and have a reasonably intelligent view as to what we were doing. Mr. Stewart said that he would show me that if a conversion should be made on that basis that the new state Bank would be in a satisfactory condition. I told Mr. Stewart that I rather hesitated to proceed on that theory, although I presumed that he knew what he was talking about, from the fact that he had been a Bank Examiner, and had also been manager of a Federal Reserve Bank, and had had banking experience; but even in view of that situation, that I would not care to act until I knew more about it. He said that he could guarantee to me that if this program should be followed, that the affairs of the state Bank would be satisfactory although there might be a few items that we would object to, and that they could be taken care of within a very short time from the opening of the Bank. I told



(Testimony of Frank C. Bramwell.)

Mr. Stewart that I would not give him a definite answer until I discussed the matter with Mr. Hickok, my assistant. I went down to the office and discussed the matter with Mr. Hickok, and we concluded and I so notified Mr. Stewart, that we would not issue a charter until we first had opportunity to examine the assets of the Northwestern National Bank.

Q. That conversation you are quite sure occurred in the morning of the day that Mr. Stewart suggested it?

A. Well, the conversation took place while we were driving from Mr. Stewart's residence over in town; we parked in front of the Northwestern National Bank for a few minutes, and talked there.

Q. But it was in the morning of the day, whatever day it was?

A. Yes; and the question of converting to a state Bank had been discussed the previous evening with the directors of the Northwestern National Bank, and Mr. Stewart, so he informed me, had been requested to discuss the matter with me along the lines I have just briefly indicated." (R., 1238, 39, 40, 41.)

TESTIMONY OF CHARLES H. STEWART,  
FOR DEFENDANTS (RECALLED).

CHARLES H. STEWART continued to testify on direct examination, that the directors were just groping for some way out, that they were almost constantly in session, with innumerable meetings night and day, and he didn't think any one of them knew a single thing about the float or kite until they were called down into the basement of the Bank to the directors' room and Mr. Price talked to them about it, and that was on the 12th or 13th of February, 1927. That Price's testimony about it was in accordance with his view of the matter. [582—229] That he remembered that at the meeting before he went with Mr. Price and Mr. Skinner back over to the clearing-house, they were urging that the Bank had to meet any terms that were presented to us; that it didn't make any difference how difficult they were, they couldn't allow the Northwestern National Bank to suspend payment; and that the witness felt that chiefly for the reason that he was charged in that Bank with handling the accounts of what they called the country banks, meaning banks out of Portland, and in other parts of Oregon, Washington and Idaho, of which there were from 125 to 150, which carried practically their entire reserve with the Northwestern Bank, and if the Northwestern had suspended, they would have had to suspend, and the effect would have been that the Bank would have gone through a liquidation in the

(Testimony of Charles H. Stewart.)

hands of a receiver, and he would have been confronted by the demands of depositors for early settlement, and the receiver would no doubt have sacrificed the Bank's assets and failed to realize on them as completely as the Bank had and would realize on them; and it was the witness' firm belief, when giving his testimony, that it would not be necessary after liquidation to assess the stockholders of the Bank and that the money that the directors had advanced would be returned; and he was very certain that there would be no stockholders assessment. That the report made by Mr. Harris and his deputies in March, 1927, after examination made at request of Bank in order that in case the Bank failed to put over the voluntary assessment, it could fall back on an involuntary assessment, and it must have a certificate of impairment from the Comptroller before they could levy such involuntary assessment, and funds were provided and waiting *to put* in when the machinery was put through; that Mr. Harris wanted to co-operate with them, was trying to help, but [583—230] he, Harris, had considerable argument with his conscience before he consented to furnish them with a certificate; that he frankly told witness that he couldn't make such a certificate, that the Bank was not solvent, but finally proceeded along those lines and said, "Well, the emergency demands it, and I will do it." That he was averse to including in the losses or bad loans assets which did not exist, but finally did it because the Bank insisted, and if they were going

(Testimony of Charles H. Stewart.)

to be subjected to the possible publicity and embarrassment of an involuntary assessment of the Bank, they wanted to do a good job of it while doing it. (R., 1134.)

Upon cross-examination, witness STEWART testified that he couldn't answer whether a certificate of involuntary assessment had been issued or not, that he had never seen it he could swear to that, and that he didn't know whether there was such certificate in existence or not. That he knew officially what Harris did, it wasn't hearsay; that Harris had no more right to issue a certificate of involuntary assessment than the witness did; that the terms imposed by the clearing-house are in the contract, the ultimate terms, in writing; he knew that the examination was completed and the Comptroller said he would issue the permit, but that the clearing-house never got to any terms at all; all witness knew *was the* ultimate result was the direct action of the First National Bank and the United States National Bank, but the clearing-house guaranteed them against loss. He couldn't answer as to whether the clearing-house meeting were informed of what he characterized as the "float," but that Mr. Price and Mr. Morden went there in the morning and Skinner and the witness went in the evening, with Mr. [584—231] Price, and when he was asked about the facts affecting the condition of the Bank which were disclosed to the clearing-house, in the discussion he had, he responded:

(Testimony of Charles H. Stewart.)

“Oh, I can’t answer that; I don’t remember; I don’t remember. Of course you will understand that Mr. Mills and Mr. Ainsworth and their immediate associates in their banks, knew of this float, and I have no doubt that they had apprised the other members of the clearing-house of that condition, although I don’t remember that it was discussed that night. . . . ” (R., 1137).

The attention of witness was particularly called to the examination by Otto, by Wylde and by Harris, and he was asked if he knew whether these matters were ever discussed by them with Olmstead, affecting the affairs of the Bank which witness said were in Olmstead’s charge, and he stated that he heard him at the close of every examination go over in the presence of the board and in Mr. Olmstead’s presence as a member of the board, practically all the matters that he had already criticised. That the Wheeler lines were unquestionably discussed in the presence of all of the examiners. That he had Bates go over and get the Cash Items of a large amount, when his suspicion *were* aroused early in February, and that he got the last list of Cash Items from Bates about the 7th or 8th of February, because it was two or three days just prior to the meeting of the 11th. He couldn’t remember what took place in the meeting with Wheeler, but Price presented the proposition; couldn’t remember what Wheeler said, but thought he was asked for the specific amount of his overdrafts, and Wheeler gave an incorrect one, but witness couldn’t remember

(Testimony of Charles H. Stewart.)

exactly, that Wheeler talked freely, and was told he would have to get the money forthwith to pay up his loans, and witness had reason to believe that Wheeler was often asked to do this. That from 1921, the time he went with the Bank, on down to [585—232] the time when he was in the Comptroller's office, he didn't think he ever heard of any suggested change in the management of the Bank; that the Comptroller wrote them a letter prior to his trip to Washington in 1926 and he thought rather suggested a change, was not specific, the witness amended, but that he was quite specific in Washington, giving as his reason that he felt that the Bank had not made the progress they should have in cleaning up the slow stuff that they had, and believed they should have a new president. That the entire blame or criticism for the slowness was laid to Mr. Olmstead.

'Q. Did you ever know of any previous demand having been made on Wheeler to pay up?

A. You mean to pay up his loans?

Q. Yes.

A. Why, I have reason to believe that he was often asked to do it. He was never formally sued.

Q. No, no, but you know what I mean; who would do it?

A. Mr. Olmstead would have done it, and I am very certain that he did, because it was generally *understand* among our directors that it was desirable that Mr. Wheeler reduce his lines there in the

(Testimony of Charles H. Stewart.)

Bank; and I am very certain that Mr. Olmstead conveyed that to him many times.

Q. Now, one question going back. Did you go into this element of practice that Mr. Hart was interrogating you about? In case a customer received credit on a check on and out of town bank, if the person to whom the check came for approval believed it to be ultimately payable, it would be the bank's practice to pass it for credit, would it not?

A. Yes; not the teller, however.

Q. No, no; did you ever hear during the time that you were there, from 1921 I think you said, of any suggested change in the management?

A. No, I don't think I ever did until I was in the Comptroller's office.

Q. What did the Comptroller say about it? That is, McIntosh, when you were in Washington in 1926.

A. I should amend that; he wrote us a letter prior to that, and I rather think suggested a change. He was not specific. He was quite specific in Washington, in discussing a change in the management.

Q. Did he give his reasons?

A. He felt that we had not made the progress we should have made in cleaning up this slow stuff that we had, and believed that we should have a new president. [586—233]

Q. Well, in other words the entire blame for the slowness, or criticism, or whatever you call it, was entirely laid to Mr. Olmstead?

A. Well, he chose to hang it on him; I don't think fairly; I would not want to suggest that Mr. Olm-

(Testimony of Charles H. Stewart.)

stead did more than share the blame in the apparent slowness in the collection of these assets, because I think it was an almost impossible task; the Comptroller was perhaps impatient with him, and he rather insisted that he was to blame. I don't believe that either Mr. Price or I felt that it was entirely a proper criticism." (R., 1142, 1143.)

That the calls that were made and published by the Bank in the newspaper, "The Oregonian," were not in response to the Comptroller's demands, and were the same thing as sent to the Comptroller, they were supposed to be exact copies. That the reason why there were peculiar conditions in Portland that affected this Bank were described by the witness as follows:

"A. . . . We had had three Banks in Portland for a generation or two, and here came a new Bank which offered opportunity for anybody that had been affronted, or for any imaginary or other reason didn't like the other banks, he had a chance to move in on the new one. They had never had that opportunity before, and there was a considerable growth. I might say further that in the establishing of a new bank like that, that we are not apt to get the best accounts from the other banks; that the grade of accounts that were naturally attracted to the Northwestern were not exactly the best; it couldn't be otherwise. A man who is entirely good is usually entirely satisfied." (R., 1144.)

This witness had studied law, had been with the Federal Reserve Bank for several years, and had an



(Testimony of Charles H. Stewart.)

intimate familiarity with the National Banking Act and with the Federal Reserve Act; he testified that the reason which most affected him personally in not wanting to change to a state bank, was the publicity, he believed, but that was only a guess—that the large [587—233-a] amount they had laying with the Federal Reserve Bank, if it had been picked up on short notice, would have caused them embarrassment.

TESTIMONY OF MARK SKINNER, FOR DEFENDANTS (RECALLED).

MARK SKINNER was recalled for the defendants, and testified that he became vice-president of the Northwestern National Bank in January, 1921, and a director in January, 1922, and continued to hold those offices until the closing of the Bank. That he had extensive experience as vice-president of the First National Bank in banking in St. Paul, Minnesota, and elsewhere. He explained the action of the executive committee of the Bank of October 9, 1924, in the absence of Olmstead, and stated that he had been informed by one of the clerks that checks had been returned which Wheeler had deposited with the Bank and which had been sent east, being drawn on eastern Banks, and been returned unpaid. That Wheeler came down and explained that there would probably be more of the checks back and explained it, and furthermore, he would need some additional funds and applied for a

(Testimony of Mark Skinner.)

loan of \$350,000.00. It finally resulted in the Bank lending him \$250,000.00, \$100,000.00 of which was to be used for the McCormick Lumber Company, \$100,000.00 for the Telegram Publishing Company and \$50,000.00 for the Wheeler Timber Company. That Wheeler took care of this loan, or the larger part of it in 60 days, and some of the board members had objected to extending him the credit and assented only because of the necessity of the situation. That he was present at a later time when Wheeler applied for an additional loan of \$150,000.00, which was authorized and actually made, after lengthy discussion. That the application was presented by Mr. Olmstead, and after due discussion it was voted upon. [588—234]

That about the middle of the summer during the year 1926 witness recalled Mr. Bates spoke to him on two or three occasions about checks of the McCormick Lumber Company coming back unpaid, but he did not at any time have any information from Mr. Bates or anyone else to indicate that there was a continued practice of acceptance by the Bank of checks for immediate credit followed by return of those checks dishonored; that witness had asked Bates if the matter was being taken care of and if they were being reported to Olmstead, and was told that they were, but witness had no talk, himself, with Olmstead, and his first knowledge that there was a "possibility" of such continued practice was when his attention was called by June Jones, vice-president of the Bank in the first week of Feb-

(Testimony of Mark Skinner.)

ruary, 1927, to the fact that while he, Jones, had been in the collection department he had seen some large items there, and said that he wanted witness to investigate for himself. He discussed the matter with Mr. Stewart over at Stewart's desk, and Stewart had just received a list of a large number of Wheeler items which had been returned in transit; they decided the matter must have immediate consideration, so they took it up with Mr. Price as chairman of the board, who in turn took it up with Olmstead. (R., 1154.) When Bates had talked to him, he said the items were coming in and were being referred to Olmstead, and that they were being taken care of. Witness said he agreed with the testimony of Price about all the transactions in February and March, 1927, and all transactions up to the end of March. That he was present on all occasions, and adopted the testimony of Price and Stewart at the trial. [589—235]

On cross-examination (R., 1155.) this witness testified that he did not recall telling any of the other officers and directors what he had learned except when he spoke to Price about the situation. That he didn't know whether Wheeler had taken the checks up or not, on the prior loan, that he told Olmstead and let it go at that, he couldn't remember what Olmstead had said; that he showed Olmstead the minutes of the meeting of October 9, 1924, held while he was away, but that there was no discussion as to how the checks were to be handled. That all

(Testimony of Mark Skinner.)

of the Wheeler guaranties were held in the note department of the Bank, and anybody who wanted to look at them, to see what was back of the line, they would make inquiry of the note department, and would be able to get the guaranties if they were there. He didn't remember when they first commenced to get guarantees from Wheeler, or in connection with the Wheeler line, and did not remember whether or not they had guaranties of Wheeler in the Bank before the meeting of 1924, that they had memoranda at various places in the Bank covering guarantees when given, and if a guaranty was requested it would be discussed at the board meetings and put in the minutes; that they had informal meetings about such things, and if guaranties were taken it didn't affect the fact whether or not it was recorded in the minutes; that witness and the directors knew that they had Wheeler's guaranty on all of these transactions, or his endorsement, that they had either or both and it was common knowledge that they had. (R., 1166.) Witness stated that he never had any occasion to talk to Olmstead about the Wheeler checks. That he had been in court all the time since the case started and heard all the testimony, and nearly every [590—236] junior officer in the Bank had been called, and they all stated that they knew about the matter in a general way but that nothing had ever been elicited to call his attention to anything irregular or out of the way, that his duties were largely confined to loans and matters of that character, policy

(Testimony of Mark Skinner.)

of the Bank. He explained the action of the board at the meeting of October 9, 1924, as having been taken up by himself when Olmstead was out of town, but stated that there weren't any other times when Olmstead was away that he could recall, that his recollection was sound and true about that. That he did not mention what he had learned from Bates to Olmstead, but stated that the Wheeler lines were in constant discussion with him, as well as every officer and director in the Bank. That he did not know that the McCormick Lumber Company account was in the Bank at the time, or had been reopened. That witness bought the Morden stock in August, 1922, August 23d, and paid \$125.00 a share for it. That he was secretary of the meeting of the executive committee on May 31, 1924, at which there was a discussion of notes and loans, and it was discovered that there was an excess loan to George H. Kelly, one of the members of the board, which had been made the previous week, and that it was immediately corrected; that during this same period, March 10, 1925, a large loan had been made to Charles K. Spaulding Lumber Company, the same Spaulding who was a director and defendant, and that witness was on the committee at that time. That a line of credit was also extended to Oregon Pulp & Paper Company in large amount, and that Mr. Spaulding, director-defendant, was one of the stockholders of that company. That on October 10, 1925, there was another large loan made to director Spaulding. [591—237]

(Testimony of Mark Skinner.)

That the loan limit of the Bank from 1922 on was \$240,000.00 to any one person, and that was what Spaulding got in March, 1925, and Oregon Pulp & Paper Company got \$150,000.00 and again on October 20, 1925, the C. K. Spaulding loan was \$158,000.00; that all of these loans were paid. Witness was shown Complainant's Exhibit 60 and stated that it bore his signature. He did not remember the date, couldn't recall the date, couldn't remember the date, couldn't recall any conversation with Olmstead about it. (R., 1168.)

#### TESTIMONY OF E. S. COLLINS, FOR DEFENDANTS.

E. S. COLLINS testified that he became a director of the bank in 1923, that was his recollection; was a lumber and timber man, also actively engaged in manufacturing and was affiliated with a number of different concerns. Went on the board of the United States National Bank in January, 1928

(R., 1169). That as a new member of the board of the Northwestern National Bank, he did the best he could to learn the duties of his office and see how things were going, and found soon that things were going as well as he could have suggested himself, about all there was for him to do was to follow the crowd and go the way they went; that before he went on the board he thought they were inclined to be too sanguine and too careless, but when he

(Testimony of E. S. Collins.)

came on the board he found them to be very conservative indeed, and very active. That he attended a number of the executive meetings, to inform himself of the affairs of the Bank, but never was on the Examining Committee; that the board was doing things so well that there was nothing for him to criticize. That he went to the Bank frequently and talked matters over with Olmstead, and talked very freely about the Bank's difficulties as he showed them to witness, [592—238] and they tried to devise ways and means to better the condition of the Bank. He saw the other directors who were not on the Examining Committee or Executive Committee and who are co-defendants in the case, in the board meetings, and they seemed to be fulfilling their functions very fully indeed, just as well as he was himself; couldn't say what the other men were doing but witness was trying to find out what was going on and trying to function properly and see if he could add anything to what the others were saying and doing, but found that he could not in most cases. That he exercised his judgment in matters with which the board was dealing during the period from 1923 on, and the other directors exercised their own judgment, or did the best they could. That he had known J. E. Wheeler and his family since he was a small boy, and was better acquainted with his timber holdings than any other member of the board; that he had personally investigated the Redwood region in California, and was fairly well informed as to the values and class

(Testimony of E. S. Collins.)

of investment that Wheeler was interested in. That he conferred with Olmstead, and they exchanged notes as to what they both knew and thought about the Wheeler property, and what might be done as to thawing out some of Wheeler's excessive loans and things of that kind; witness gave especial attention to that. That Olmstead had told him, or Olmstead believed or it was commonly accepted, he had forgotten which of the three, that Wheeler had a net worth of four million dollars, but witness was satisfied he was not worth that much, although he thought Wheeler was worth more *more* money than he owed the Bank or anybody else, and supposed his account was perfectly secure, although slow and he knew it had been criticised, but [593—239] witness wanted to see him pay it—not that he was afraid of the security however. He discussed the sale of the "Telegram" with Olmstead number of times. That witness did not want Mr. Wheeler to be compelled to give an option for the sale of the "Telegram," as he thought the Wheeler family would help him out of his difficulties; that witness had been very anxious to have Wheeler sell some of his property and security and pay out, but that he wanted him to sell something else than the "Telegram." That witness took the matter of paying up with Wheeler a number of times, and always advised Wheeler to sell something, timber, lands, or some of his security and get on easy street. That it was never brought to a vote at any board meeting whereby witness was called upon to express



(Testimony of E. S. Collins.)

himself definitely and finally on the subject of forcing Wheeler to sell the "Telegram," and so far as he knew, no actual sale of timber was ever interfered with by anything witness said or did. That the first knowledge he had of the McCormick float was early in February, 1927, at a meeting so called at which Mr. Olmstead confessed to the matter and explained it to them; that prior to that time Mr. Wheeler had his implicit confidence. That witness had full confidence in every board member, and didn't question anything which was put before him by the Examining Committee or the Executive Committee, that he didn't question them being facts. (R., 1176.)

On cross-examination of this witness, he testified that he first became a stockholder in the United States National Bank of Portland, Oregon, in the spring of 1923. The stock he acquired in the Northwestern National Bank was more than the stock which he had in the United States National. Most of his stock was bought [594—240] in the year 1923, and that he had paid \$140.00 per share then for his Northwestern stock, he thought he paid \$137.50 for some of it and afterward bought some of the stock for less than that, but the close price was around \$140.00, that his recollection was definite that in 1923 was from \$137.50 to \$140.00. That witness' talks with Olmstead were irregular but frequent, he was very busy with his own affairs, and at times it probably might have been as long as a

(Testimony of E. S. Collins.)

month when he would not be in the Bank to talk with Olmstead specially. He did not recall that he ever had any talk with him about the rejection of the Wheeler lines by the board in 1924, and did not know what the board did at its meeting of October 9, 1924. Witness had disagreed with Olmstead as to the worth of the Wheeler holdings, and informed Olmstead of what he thought he (Wheeler) was worth; that he had considered Wheeler's timber holdings worth from one-half to three-fourths of what Olmstead thought they were—that if Olmstead placed the value at four, witness would place it at two or three. That his knowledge of Wheeler's holdings were gained before he ever went on the board; that he thought Wheeler's property was worth a great deal more than his debts, and he thought his family would help him out; that if he had been handling Wheeler's affairs, he would have handled them in a different way than what Wheeler did; that Wheeler's method of doing business with the Bank were well known, when he spoke to Olmstead, and that witness covered the whole field, as far as he could, of what Wheeler ought to do and what the Bank ought to do, and what Wheeler could do, when he talked to Olmstead. That one of witness' suggestions to Olmstead was that he, Olmstead, should use his influence to get Wheeler to offer his timber for sale [595—241] at a lower price; that Wheeler's prices were too high, and were out of consonance with the market at that time and too high to get ready sales. Wit-

(Testimony of E. S. Collins.)

ness used his best endeavor with Wheeler to persuade him to dispose of some of his holdings so as to pay his debts, but did not know whether the board knew these things or not, because he didn't talk with the board so much as he did with Olmstead. That Olmstead was a very dominating man, a man of great force, very great activity, a man who wanted to do things himself, and who understood how things should be done, and men of that type usually go ahead and do or don't do them, and to change them requires considerable effort, and sometimes a fight, and witness thought the board was inclined to let Olmstead go ahead and do things, when he was doing them right, without any interference. Witness thought it was right for them to do that. That he usually approached Wheeler with the argument that he should get a lower price for his stuff and get out of debt. Witness said he could not answer in what way the board could have expected Olmstead to get Wheeler to sell his timber, if that was what witness wanted him to do, for a less price than Wheeler wanted to take for it, and couldn't remember whether Olmstead had ever told him in his talks that he could or would collect Wheeler's loans. Witness was quite sure that Olmstead told the board that if Wheeler didn't pay up he would call his loans, but couldn't remember whether it was voted on, or what action was taken, and did not know what the board wanted with respect to taking extreme measures with Wheeler. That he talked with one

(Testimony of E. S. Collins.)

or two of the members of the board about it, and they rather weakly expressed the same sentiments as himself, but he wasn't sure whether they really [596—242] meant it or not. That the ones he spoke to about it were Mr. Metschan, and probably to Mr. Spaulding as he talked to Spaulding a great deal about the affairs of the board, but he wasn't sure of Mr. Spaulding, and he was not at all sure that Mr. Metschan expressed himself as favoring the things he (witness) did; he could not recall what was said by either of them, but that what witness said was that Wheeler ought to be required to sell some or all of his timber but that he should not be forced to sell the "Telegram" first; that witness wanted him to be forced to sell something else besides the "Telegram," if force was to be used. Witness said he would rather not answer the question as to why it was that he didn't want Wheeler to sell the "Telegram" if there was an opportunity to do so—that he talked it over with Metschan, was not quite sure he had talked it over with Spaulding, not sure of talking of it to anyone else. That the conclusions of the three of them as to whether or not the "Telegram" should be sold were noncommittal—there was no agreement; witness was sure how he felt, but wasn't sure how they felt, and did not remember what idea they had expressed, either of them, at any meeting, as to Olmstead forcing the sale of the "Telegram"; he did not remember at all.

(Testimony of E. S. Collins.)

On redirect examination this witness knew that Mr. Wheeler in 1926 and the early part of 1927 was endeavoring to complete a sale of the redwood timber in California; he couldn't express an opinion as to whether or not the attempts were based on a price which should have moved the opinion, but thought the difficulty at that time was that he was asking too high a price, that he believed a sale could be made at a fair price, he [597—243] wasn't sure that he knew what he was talking about, that was only his opinion. That witness never missed any of the full board meetings of the Bank. He put up 100% of his stock on March 1st, 1927, and again the night of March 29, 1927, and besides that signed a \$2,000,000.00 guaranty fund, and that he knew what he was signing, too, and during those occasions used his best judgment of what he thought was for the good of the Bank. (R., 1189-90.)

On recross-examination (1190) witness testified that he was present at the meeting when the State Bank organization was discussed, before Olmstead resigned, and he was also at the meeting that night, and that most of them that participated, when they separated that night thought that was the best possible way out; that when they next met, however, Mr. Price came in and stated that he didn't think it advisable to go ahead with it, and then they all thought and felt the same way Mr. Price did, after thinking it over more closely. That Mr. Olmstead was a factor in the discussion, that he was still

(Testimony of E. S. Collins.)

president of the Bank when that discussion took place,—witness was sure of that,—and that Olmstead wanted to go through with the plan, he seemed to, at least that was his attitude. That about a year before the Bank closed, witness went to see Mr. Ainsworth and mentioned the matter and talked with him about it, and Ainsworth told him that the United States National Bank was not interested in buying the Northwestern, that they didn't want to see the Northwestern bought out, didn't want to see them quit business and discontinue, that Portland needed the Northwestern and they wanted it to remain—that they were not in the market to buy it. That to the best of witness' [598—244] recollection that was some time in the winter or spring of 1926; that that talk was had by witness personally, and no other Bank official was present; he was not sure he had communicated that afterward to anybody else of his fellow directors or officers. Witness didn't know anything in a similar way about a previously suggested sale to the First National Bank, he didn't know the First National crowd well enough to talk with them confidentially. That when witness got on the board in 1923 he heard of a suggestion as to change in the management of the Bank, that he was opposed to a thing of that kind, for although he didn't consider Olmstead a perfect president of the Bank, he didn't know where they could get anybody any better nor as good. Witness couldn't place the time nor the date, as to when he

(Testimony of E. S. Collins.)

first heard the suggestion of change in management. (R., 1194.)

Thereupon it was stipulated for the defense that Exhibit 1 might be received in evidence, with a tabulation of directors' meetings from January 13, 1920, the date of Metschan's election, together with the meetings of the Executive Committee from the time of the election to the time the Bank closed, showing the board meetings at which he was present and those from which he was absent. The total showing of directors' meetings at which he was present was 95 out of 108, and out of 378 meetings of the Executive Committee he was present at 326. With regard to Mr. Spaulding, out of 62 directors' meetings he was present at 60, and out of 224 Executive Committee meetings he was present at 216. These were segregated as to years. [599—245]

#### TESTIMONY OF PHIL METSCHAN, FOR DEFENDANTS.

PHIL METSCHAN was next called for the defense, and testified as to his connection with the Imperial Hotel as president and active manager; that he became a stockholder of the Northwestern National Bank in 1918 and a member of the board of directors in January, 1920; that he was elected to the Executive Committee soon after that, and became acquainted with the fact that the Bank had certain slow and undesirable paper, but that he

(Testimony of Phil Metschan.)

thought practically all of the items which have been mentioned in the bill of complaint in this case, were going accounts at the Bank at that time, but that trouble commenced to develop at the Bank in 1921, and the situation became known to the board of directors of the Bank through the inability of their borrowers to meet their indebtedness when it became due. The board went to work to improve that condition, and adopted a very conservative policy, watched everything very carefully and acquainted themselves with collateral security and statements, and with the people involved in the various concerns, and that there was a consciousness on the part of the board as to the seriousness of these conditions and the importance of them as far as the Bank was concerned, but that the members of the Executive Committee and the directors too, took a great interest in the affairs of the Bank and gave in the opinion of the witness, their best efforts all the way through. That witness interested himself in the affairs of the Bank as much as his time permitted, and endeavored to familiarize himself with the properties which it had acquired, and established a contact with the individuals personally who were indebted to the Bank, and visited various of the properties which were in question. [600—246]

That witness was very much encouraged at the development of the Bank, and believed they were building a great institution; he had every confidence in the world of the ultimate results, and never entertained any concern about the condition of the Bank



(Testimony of Phil Metschan.)

that might have been created by suspicion of any of its officers; that he had no misgivings as to any of the habits or ability or integrity of any of the officers. That the first feeling of that sort that arose was early in February, 1927, when witness was advised of the existence of a float when Mr. Price or Mr. Skinner told him, upon inquiry as to how they were progressing with the work or organizing a company to take out the frozen assets that things were not so good, that there had been developments which gave them some concern. That on the 11th of February he attended a board meeting at which Wheeler and Olmstead were present, and both made admission of the float. Thereupon witness was asked the following questions and made the following answers:

“Q. And this conversation with either Mr. Skinner or Mr. Price, as the case may be, was either the day before that, or two days before?”

A. A day or so. I don't want to be positive.

Q. Up to that time you were not suspicious of any officer in the Bank? A. Entirely so.

Q. And had you discovered the existence in any way of this practice, or this method of handling checks, which created the float? A. I had not.

Q. Mr. Burekhardt, the plaintiff in one of these cases, when he was on the stand had something to say about conversations that he had had at different times with you. You and Mr. Burekhardt have been acquaintances, or perhaps friends, over a period of years, haven't you?

(Testimony of Phil Metschan.)

A. Close friends for many years.

Q. And for a considerable period of time were both interested as stockholders in the Bank?

A. We were.

Q. What is the fact as to whether you have repeatedly conversed about the affairs of the Bank with Mr. Burckhardt?

A. Up to the time of the suspension I spoke to him quite frequently. [601—247]

Q. And have you ever deceived Mr. Burckhardt in the conversations you have had with him, about your belief in the condition and position of the Bank? A. No.

Q. I asked you to make a search for correspondence that you might have had with him, after he was on the stand, and certain correspondence was introduced in evidence. Did you do that?

A. I did.

Q. And what is the fact as to whether you could find any letters, copy of letters you had written to him, or letters he had written to you?

A. I couldn't find any letters in my files, either originals or copies, but about a year or so ago I cleaned my personal files, and all correspondence that was unimportant I destroyed, and I might have destroyed the correspondence with Mr. Burckhardt.

Q. If there was an answer to the letter which Mr. Burckhardt wrote to you—by answer I mean written answer—and I want to refer, Mr. Bristol, to letter which you introduced in evidence, to which

(Testimony of Phil Metschan.)

there was no answer introduced in evidence. You remember you introduced two, one of which was answered, and one of which was not. If there was an answer to the former you have no recollection of it? A. I have no recollection, no, sir.

Q. But you have a recollection of correspondence with Mr. Burckhardt?

A. Correspondence, yes, and conversation, too.

Q. And among such conversations did you have one with him in which he sought your advice as to the sale of his stock?

A. As near as I can recall it, it was either late in 1926, or early in 1927. He discussed with me the advisability of selling his stock at a price, I believe, of \$120.00.

Q. What advice did you give him?

A. I told Mr. Burckhardt we were organizing this company to take out frozen assets, and that in my opinion his stock would be paying dividends in a very few months, and would be worth much more. The Bank was making money, and was in the best shape it had ever been.

Q. Was that your belief at that time?

A. That was my belief at that time.

Q. And by your statement that the bank was in the best shape that it had ever been in, what period of time were you referring to?

A. Since the deflation, since the troubles have developed.

Q. These suspension of dividends which arose, after these bad loans began to develop?

(Testimony of Phil Metschan.)

A. Yes, sir.

Q. Did you and Mr. Burckhardt discuss at that time this proposed new corporation which involved the voluntary assessment of \$37.50 a share?

A. I informed him of the proposed plan.

Q. And was any reason asked for by Mr. Burckhardt as to the necessity of the stockholders paying in \$37.50 a share?

A. I explained to him that there were a number of assets that were frozen, and we would be slow in realizing on, and in my opinion they would be worth all we carried them on our books for, in some cases [602—248] more; on many of these cases such as the Michellvi Ranch paying a net income, and others would soon be paid, and we were going to put these items into this company, and felt that ultimately they too would pay out.

Q. And was there of these items, like the Dufur Orchards, as to which losses were anticipated?

A. Yes, I mentioned those things.

Q. Didn't you also have a conversation with Mr. Burckhardt about agreements among the stockholders, or proposed agreements restricting the sale of their stock? I call your attention to Complainants' Exhibits 60 and 11. I think you are familiar with the purport of them through your attendance at the trial here. Did you ever have any conversation with Mr. Burckhardt about the subject matter of these agreements? A. Yes, sir.

Q. Where did that conversation take place?

(Testimony of Phil Metschan.)

A. In my office.

Q. Do you recall approximately the time when it took place? I don't mean the time of day, but the year.

A. I don't remember the year, but I first heard of this agreement when Mr. Olmstead invited me to sign it.

Q. Was that before or after your conversation with Mr. Burekhardt? A. Before.

Q. What was any conversation between you and Mr. Olmstead in regard to that?

A. He just suggested that I sign this. He was getting up this agreement among the stockholders not to sell their stock for a year.

Q. And after that conversation with Mr. Olmstead you talked the matter over with Mr. Burekhardt?

A. The next morning, I believe, Mr. Burekhardt called at my office and asked my opinion as to the advisability of signing such an agreement. Said he had been asked to enter it. I told him that I too had been invited in, but I refused, as I remember our conversation. He said, 'What would you do in my place'; and I advised him not to sign it. Well, he says, 'I have already signed it.' I think I told him then it didn't make much difference, because I didn't believe many of the stockholders would sign it anyway.

Q. Not only with respect to these two particular agreements which you did not sign, what is the fact as to whether at any time during your ownership

(Testimony of Phil Metschan.)

of the stock in the Northwestern National Bank, you ever entered into any agreement with anybody with respect to restricting your right to sell, or the conditions under which you would sell?

A. I never made any agreement with anyone with reference to my stock.

Q. And if any combination of stockholders in that bank existed looking towards limiting the right to sell stock, you were not a party to it?

A. I never knew of any combination looking for control; as I understood this agreement—I have not read it—it was an agreement not to sell their stock. I never entered into any agreement of any sort.” (R., 1200, 01, 02, 03, 04, 05.)

Witness remembered the testimony in the case as to conversation that took place at the Imperial Hotel between Wheeler, Spaulding and himself relative to the [603—249] sale of the “Telegram”; that Olmstead wanted Wheeler to sell the “Telegram”; Wheeler came and wanted to know what witness and Spaulding thought, and Spaulding told him that he wanted him to sell something to reduce his indebtedness, that they didn’t care whether it was the “Telegram” or the timber, but the Bank felt that he should get busy and get rid of some of his assets and reduce his indebtedness at the Bank. That a day or two later Olmstead brought the matter up at a meeting at the Bank, and assured the board that they prevented him from getting an option from Wheeler in order that he might sell the “Telegram.” and not standing back of him. That

(Testimony of Phil Metschan.)

was witness' first intimation that Olmstead had any idea of forcing Wheeler—thought that was also the board's first information. Witness told Olmstead that he would never find him (witness) objecting to anything that he wanted to do to collect from Wheeler that was reasonable and sound and businesslike. That Spaulding and witness were not advised of Olmstead's plans by Wheeler or by Olmstead. Witness was familiar with the attempts of the Bank to sell out to the First National Bank and the United States National Bank, and knew of negotiations with both institutions, and that the negotiations were undertaken with the consent and authority of the board, who all realized the seriousness of the situation and were making every effort they could to conserve the company's depositors first, and the stockholders. That he participated in the deliberation that took place after it was determined that no sale could be effected to the two banks, and that the board gave serious consideration to all possible plans that were offered as affording possibilities of meeting the situation which existed. [604—250] That witness still felt confident that every member of the board was devoting practically his entire thought to the problems of the Bank during that distressing period; that witness was one of the signers to the two-million dollar guaranty that the other directors and stockholders signed, and knew what he was signing. (R., 1208.)

(Testimony of Phil Metschan.)

On cross-examination this witness testified that they *had of* changing the name of the Bank and organizing a new national bank, with a different name, and this came up during that period, but he did not recall who suggested it, it was after the failure of the negotiation with the two other banks and after they stopped, and the negotiations he referred to were before Olmstead went out as president, before February 28th. Witness fixed the place of the discussion as to the consideration of a new national bank as in Mr. Price's office in the "Oregonian" building; that they finally concluded that the best thing to do was to guarantee the Bank against loss by the deposit of money, which they had already arranged for, and guarantee the balance when required, and that was the final plan that they adopted. That besides the plan of a new national bank with a new name there were no other plans such as the witness could recall except the state bank, which had been testified to at the trial, also the \$37.50 assessment of 1926—that outside of that there were no other plans that he could recall, he could have remembered about them if there had been, as he was practically sleeping at the Bank at that time. That when Wheeler came to see him and Spaulding about the sale of the "Telegram," Wheeler told him that Olmstead wanted him to sell the "Telegram" and give an option on it, and he never had heard before the trial when Mr. Olmstead [605—251] so testified, that Olmstead had told him he would call his loans if he didn't sell the



(Testimony of Phil Metschan.)

“Telegram.” When witness was asked to tell how well he knew Wheeler and of his affairs in connection with Bank, he testified as follows:

“A. I found the Wheeler line in the Bank when I went on the board. Up to that time I had very slight acquaintance with Mr. Wheeler. I informed myself on the Wheeler lines as best I could, familiarized myself to a certain extent with his holdings, in fact have been in some of his timber. I formed the conclusion that Wheeler was a very wealthy man, and never believed that the Bank would lose anything on the Wheeler lines. The Wheeler lines, as the record will show, consisted of several accounts; they were not all J. E. Wheeler; was the ‘Telegram,’ the Wheeler Estate, the Wheeler timber, and L. R. Wheeler; and I never had any question about their ultimately being paid. The board was constantly endeavoring to get reductions on the Wheeler lines. There was the McCormick Lumber Company account in there also when I went in the Bank, but it secured a liquidation of the McCormick Lumber Company account, and after the McCormick line was paid the account was closed. Immediately thereafter the board, or the president, acted to continue this work to liquidate other Wheeler accounts. We were endeavoring particularly to get the J. E. Wheeler notes out of the Bank; we felt that the Wheeler Estate and the Wheeler Timber Company could be—that is my own belief—could be allowed to run until we had liquidated these more urgent accounts. As far as

(Testimony of Phil Metschan.)

the 'Telegram' was concerned, I always felt it was a good account, a going concern, and entitled to a line, although I wanted to see that paid also." (R., 1211.)

That witness did not consider the Wheeler lines desirable accounts because there were no balances. That Wheeler was not a satisfactory customer because he carried no compensating balances, and witness was constantly on the alert watching every opportunity to see that his accounts were removed from the Bank. That witness disbelieved in Wheeler—in his financial management, didn't believe he knew how to manage his affairs and wanted to see him pay, that he was involved in so many companies with minority holdings that it was a difficult matter to secure liquidation, and they had to nurse him along, and witness considered him undesirable—an undesirable account but thought Wheeler was absolutely solvent. [606—252]

That witness told Wheeler, after the discovery of the float in 1924 that he felt that he (Wheeler) had deceived them, and witness would not vote for him to secure any further credit. When witness was reminded of his testimony in the criminal trial, at which he testified that he had told Wheeler when the first float had been discovered that he (Wheeler) would never get a dollar from the Bank as long as witness stayed on the board, he replied that he had just testified to that. That witness was asked if he recalled his testimony in the criminal trial concerning the same situation, and answered:

(Testimony of Phil Metschan.)

“A. Well, I can’t say I was expecting it to go through, because our experience with Wheeler had been so unsatisfactory that they—Wheeler was in Los Angeles or San Francisco in January, pretty nearly all of January trying to close a deal on the redwood timber.

Q. He was away? He expected to get \$800,000.00 by that deal and you all expected that deal to go through, didn’t you?

A. I was hoping it would.

Q. Well, you all expected it to?

A. Well, I can’t say I was expecting it to go through, because our experience with Wheeler had been so unsatisfactory that they had to show me, when they had any deal with me.

Q. You wouldn’t believe it until you had the money? You didn’t believe anything Wheeler said? A. Not very much.

Q. You asked him to dinner the other day, didn’t you? A. No.

Q. Here in the courtroom?

A. No, I said ‘You better go to dinner.’ I didn’t ask him to dinner.

Q. You talked with Wheeler a good many times during the summer of 1922, didn’t you?

A. With reference to the affairs of the Bank?

Q. Yes.

A. I can only recall once or twice that I ever talked with Wheeler with reference to the Bank. He called on the Bank on one or two occasions when

(Testimony of Phil Metschan.)

we were in session, and I met him occasionally around the Bank.

Q. You believed in him as long as he was publishing the 'Telegram,' didn't you?

A. I told Wheeler at the time of the float—I said I didn't altogether believe in Wheeler. I said I began to disbelieve in Wheeler at the time I introduced that resolution—(evidently referring, I think, to October 9, 1924)—I told him then myself that I had no confidence in him because he deceived us." (R., 1213, 1214.) [607—253]

Witness said he recalled that testimony, and that he hadn't changed his mind since, regarding the float, but that he regarded Wheeler's account as perfectly safe, if that was what was trying to be found out. The witness then by question and answer testified as follows:

"Q. No, I am not. I am asking you individually, as a director, at the time you received your experience with Wheeler, what you knew and ascertained, whether you didn't express yourself as heretofore, that you didn't believe in Wheeler?

Mr. HAMPSON.—He didn't say that. He said not very much.

Q. What I have read to you?

A. I believed Wheeler's statements as far as his resources were concerned, because we had evidence that he had these properties, and I believed they would be worth practically what he thought they were, what he said they were; but I was not in favor of advancing him any more money.

(Testimony of Phil Metschan.)

Mr. HAMPSON.—Do you mean 1924?

A. 1924.

Q. You made another loan after that, didn't you, in 1925? A. Well, the Bank did, yes.

Mr. LOGAN.—That was the loan they got increased security on?

Mr. BRISTOL.—Yes, a lot of collateral. They said they wanted to cover another loan, and all that. I remember all that, and I guess everybody else does.

Q. There is no dispute about this letter you wrote Burckhardt, that was introduced in evidence, is there? A. No.

Q. I think you must have misspoke yourself when I asked the question; when Mr. Hampson first asked you whether your hotel business didn't occupy you to the exclusion of everything else, you didn't mean that, you meant it the other way around, that you gave more attention to the Bank than you did to the hotel business, didn't you?

A. I did for the last year or two.

Mr. HAMPSON.—That is exactly what I asked, but I think it probably true Mr. Metschan did give more attention to the Bank than he did to the hotel business.

Q. Yes; and you were on the Examining Committee during these occasions, 1926, 1927 and 1925, and back there for some years? A. I was." (1215, 1216.) [608—254]

TESTIMONY OF CHARLES K. SPAULDING,  
FOR DEFENDANTS.

CHARLES K. SPAULDING another of the defendants, was called to the stand and testified that his business was Lumberman and that he was connected with Spaulding Logging Company; that he became a director of the Northwestern National Bank on August 31, 1922, and a member of the executive committee in January, 1923, later on in the year 1923 becoming a member of the Examining Committee. That he attended most of the meetings of the directors and executive committee—that he had no prior personal knowledge of the affairs or condition of the Bank; became a stockholder in 1920 or 1921. That upon becoming a director, the matter of liquidation of the frozen loans or assets of the Bank came up before the directors meeting and the executive committee and were given attention; that the various executive officers brought before the board the data with respect to the condition of these loans and securities, and saw them from the Examiner's reports; that the manner and means of handling the situation was discussed at every meeting more or less, and that witness tried to give the situation his best judgment and consideration, he thought they all gave their undivided attention to work out the various problems, and that witness used his own judgment in taking action on the matters that came before the board. That at times, his judgment differed from that of

(Testimony of Charles K. Spaulding.)

other members of the board and some of the officers, that that happened quite often. That the first knowledge or information or suspicion he had of the existence of the Wheeler float was some time in the forepart of February, 1927, from O. L. Price, and that was two or three days before Olmstead and Wheeler appeared at the board meeting; that previous to that [609—255] time he had had no reason or information which would lead him to be suspicious of the honesty and integrity of Olmstead, that he had full confidence in his probity and honor. That when he acted and made the examination of the Bank, together with other members of the Examining Committee during the years 1925 and 1926, they did not find any unpaid or dishonored Wheeler or McCormick items in Cash Items, and that they checked the particular items against the list or total of Cash Items so as to ascertain that they were all there. That they discussed the various loans and securities, and took them up with the note man, who usually attended the meetings when they went over that line and showed them the securities etc., and explained everything they asked for.

Thereupon the words of the Examining Committee's report were read to the witness and he was asked if he did the things it set forth in the statement and said the committee did, and they had assistance from the employees in the Bank. That he had heard the testimony of Olmstead about an option from Wheeler for the sale of the "Telegram," in the latter part of 1925 or early in 1926,

(Testimony of Charles K. Spaulding.)

and also heard Mr. Metschan's testimony as to the conversation that took place between himself, witness and Mr. Wheeler, and that that testimony was just about his understanding of their position, up in his apartment at the time of the meeting at the Imperial Hotel. That witness had no knowledge that Olmstead had told Wheeler that he would call his loans if he didn't pay up, or sue him. That no junior or other officer or other employee of the Bank ever called his attention to the fact that there were unpaid Wheeler items in the Bank, at the time he was making an examination or at any time. [610—256]

Upon cross-examination, when asked if he informed Olmstead or anybody as to when an examination of the Bank was to be made, witness said that they notified the president or Mr. Skinner; he didn't remember how many times he had informed Skinner, in 1926, or whether he told Olmstead at that time. When asked if Olmstead domineered him, whatever he did on the board, he testified he didn't know that he did any more than he did the others, that if it wasn't out of line they usually followed the president's instructions. Witness had never observed any subserviency on the part of any director as to what Olmstead wanted done, "not particularly," and did not remember of any on any occasion, about any matter. That any acts that they did they were left free to consult their own discretion and judgment about it as they



(Testimony of Charles K. Spaulding.)

saw fit, without any instructions from Olmstead, that they tried to; and that is what witness said they did.

That he was on the committee when the question of the Wheeler float came up in 1924, and his recollection was that Wheeler was away at the time, but he had had no discussion with Olmstead about Wheeler's line after that, that he could remember, alone,—that they had talked at the meetings. He could not recall any particular instructions given by him to Olmstead about what he should do concerning Wheeler, by the board or anybody else, after the October 9, 1924, meeting, no more than what that resolution applied to that was put on the minute-book at the time they made the overdraft in October, 1924. He did not recall any other time. That when the Examining Committee made its examination, every facility was placed before it to ascertain the affairs and condition of the Bank, that the Bank had and knew about. [611—257]

Thereupon Mr. HART made the following statement: "We have concluded that there is no necessity of putting on the stand any other directors. Their testimony would only be eumulative, and therefore the defendants now rest." (R., 1225.)

TESTIMONY OF PHILIP HORSTMAN, FOR  
COMPLAINANTS (RECALLED IN RE-  
BUTTAL).

PHILIP HORSTMAN was called in rebuttal by the complainants, and testified that he occupied the position of Transit manager with the Northwestern National Bank; that he started in 1923 and had been with them four years; that the transit department sent out all Cash Items drawn on points outside of Portland, to be specific, to banks in Titusville, Brookville, Tionesta, and Crawford Trust Company and such like, in Pennsylvania; that the records were kept with respect to such transactions in the transit department, and they would put down a list of all the items, when they were sent out, and when they came back they made a record of whatever might have been returned and sent them down to the collection department, with what was called "trades," witness would list the total items on the face of these trades and keep one and the other was sent to the collection department along with the items themselves. That he would have the item in his department, a charge against the collection department of what was returned, and they would have the same thing there to offset their items; in other words, the items that they carried as Cash would be represented by checks the transit department returned to them; so in such transactions there were two things: first, a record of the

(Testimony of Phillip Horstman.)

checks that went out and second, a record of the checks that came back.

That witness first learned that checks of Wheeler or any of his allied *institutions coming back*, [612—258] about the spring of 1926, and that he informed Olmstead and Bates, and later, possibly about the middle of the year, he noticed that it got larger and followed the same procedure, calling the matter to the attention of Mr. Olmstead and Mr. Bates. That Fraley and the members of his department checked the records right as they found them, and got the same information he had, as they checked the various activities of the institution. That witness made up the first list of Wheeler's overdrafts in the summer of 1926, couldn't fix the exact date, but testified that he furnished such lists frequently from time to time; did not remember how many he furnished in the first part of the year, but in the latter part say from July and August on, he would furnish perhaps one a week. That the Wheeler checks were all handled as regular transit items.

United States of America,  
State and District of Oregon,

And, now, at this time after due service of notice to all other parties and compliance by appellant with equity rules 75, et seq., this statement is hereby considered true, complete, and properly prepared and is hereby allowed, settled and approved as all the evidence in said cause upon appeal and

shall be together with exhibits received at the trial certified and transmitted by the Clerk of this court to the Appellate Court at San Francisco, California, as that part of the record on said appeal.

Given and done in open court this 13th day of May, 1929.

R. S. BEAN,  
District Judge.

Filed May 13, 1929. [613—259]

---

AND AFTERWARDS, to wit, on the 10th day of October, 1928, there was duly filed in said court, a petition for appeal with order thereon allowing appeal, in words and figures as follows, to wit: [308]

[Title of Court and Cause—Causes Nos. E.-8936, E.-8939.]

PETITION FOR APPEAL AND ORDER ALLOWING SAME.

Filed October 10th, 1928.

To the Honorable ROBERT SHARP BEAN, One of the Junior Judges of the Above-entitled Court, Presiding Therein:

The above-named complainants in the above-entitled causes conceiving themselves aggrieved by [309] the order and decree made and entered by the above-named court in the above-entitled causes on the 11th day of July, 1928, wherein and whereby among other things it was and is OR-

DERED, ADJUDGED and DECREED that complainants failed to establish the allegations of their bills of complaint and that said bills were without equity and that they were not entitled to relief as to any of the defendants and the bills of complaint and causes of suit be dismissed; said causes being tried together upon the part of both complainants, do hereby respectively appeal to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, from said order and decree of July 11, 1928, for the reasons set forth in the accompanying assignment of errors which is filed herewith; and they pray that this their petition for their said respective appeals be allowed and that transcript of record in said causes with the proceedings and papers upon which said order was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco.

Dated this 10th day of October, 1928.

WILLIAM C. BRISTOL.

WILLIAM C. BRISTOL,

Attorney and Solicitor for Complainants.

#### ORDER ALLOWING SAID APPEAL.

The foregoing petition for appeal is hereby granted and allowed, and the amount of the [310] bond on said appeal is fixed at \$500.00, to be approved by this Court.

Done in open court this 10th day of October, 1928.

JOHN H. McNARY.

JOHN H. McNARY,

District Judge and One of the Judges of Said  
United States District Court, Presiding Therein.  
Filed October 10, 1928. [311]

---

AND AFTERWARDS, to wit, on the 10th day of  
October, 1928, there was duly filed in said court,  
an assignment of errors, in words and figures  
as follows, to wit: [312]

[Title of Court and Cause—Causes Nos. E.-8936,  
E.-8939.]

#### ASSIGNMENT OF ERRORS ACCOMPANY- ING PETITION FOR APPEAL.

Filed October 10th, 1928.

Come now complainants and file the following  
assignments of errors upon which they and each of  
them will rely upon said appeal from the decree  
made by this Honorable Court on the 11th day of  
July, 1928, [313] in the above-entitled causes,  
that is to say, the said District Court for the Dis-  
trict of Oregon, in and for the Ninth Judicial Cir-  
cuit, In Equity, which entered the decree of dis-  
missal of complainants bills in said cause erred as  
follows:

First. In deciding and holding that the com-  
plainants failed to establish the allegations of their  
bills of complaint.

Second. In holding and deciding that the bills of complaint are without equity.

Third. In holding and deciding that the complainants are not entitled to any relief against the defendants, and in holding and deciding that the bills of complaint and causes of suit as to said defendants should be and was dismissed, and in allowing defendants costs in that particular.

Fourth. In failing to hold, in conformity to the evidence and proof in said causes and upon the theory of complainants bills, that the defendants were liable to the complainants as trustees.

Fifth. In failing and refusing to consider the evidence produced by the complainants in support [314] of their said bills showing and tending to show that the defendants had mismanaged and not conducted the property, business and assets of The Northwestern National Bank in the interest of the stockholders of said Bank.

Sixth. In failing and refusing to apply the evidence, uncontradicted and not refuted by other evidence, that large amounts were withdrawn from the Bank under facts and circumstances disclosed by the evidence, which it was the duty of the directors to prevent; and the Court erred in holding and deciding that they had no reason or suspicion to know that such transactions were being handled in the Bank until February, 1927, the evidence being entirely to the contrary.

Seventh. That the Court erred in not holding and deciding that the critical condition in which it found said Bank actually did get was not due

to the mismanagement of said directors under the evidence.

Eighth. In failing and refusing to decide in accordance with the evidence that the transactions indulged in by the directors, as the evidence showed, subjected the stockholders not only to contingent liability as such but also to an additional liability to the undertaking Banks without the consent of said stockholders. [315]

Ninth. In holding and deciding, contrary to the submitted theory of both complainants, that directors are trustees of the stockholders and charged with an absolute duty of performance of their trust, that if their judgment and discretion results in disaster through their acts nevertheless they are not liable for the resulting injury, and in decreeing and deciding that the complainants had no relief whatever.

WHEREFORE the said complainants pray that the judgment and decree and order of said District Court be reversed and that such direction be given that full force and efficiency may inure to the complainants by reason of the allegations of their said bills for all the stockholders of said Bank.

WILLIAM C. BRISTOL.

WILLIAM C. BRISTOL,

Attorney and Solicitor for Petitioners on Said Appeal.

Filed October 10, 1928. [316]



AND AFTERWARDS, to wit, on the 10th day of October, 1928, there was duly filed in said court, a bond on appeal, in words and figures as follows, to wit: [317]

[Title of Court and Cause—Causes Nos. E.-8936, E.-8939.]

BOND ON APPEAL.

Filed October 10th, 1928.

United States of America,  
State and District of Oregon,—ss.

KNOW ALL MEN BY THESE PRESENTS that we, Charles A. Burckhardt and Fred A. Ballin, complainants [318] as above set forth in said respective causes, as principals, and the American Surety Company of New York, as surety, are held and firmly bound to and unto the defendants respondents above named in the full and just sum of 500/00, to be paid thereunto, or to their attorneys, successors, representatives, administrators or assigns, to which payment well and truly to be made we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally but firmly by these presents.

SEALED with our seals and dated this 10th day of October, 1928, at Portland, Oregon.

WHEREAS lately at a session of the District Court of the United States in and for the Ninth Judicial Circuit, in causes E.-8936 and E.-8939, being suits heard together and pending in said

court as above entitled, a decree was rendered July 11, 1928, dismissing the bills of complaint and decreeing and adjudging for the defendants, and the complainants having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse said decree in the aforesaid suits and a citation directed to the aforesaid defendants issued or about to be issued requiring and admonishing them each to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at San Francisco on a day certain. [319]

Now the condition of the above obligation is such that if the said Charles A. Burckhardt and Fred A. Ballin shall prosecute their said appeals to effect and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force, virtue and effect.

CHARLES A. BURCKHARDT.

By W. C. BRISTOL,

His Attorney and Solicitor,

FRED A. BALLIN.

By W. C. BRISTOL,

His Attorney and Solicitor,

(As Principals.)

AMERICAN SURETY COMPANY OF  
NEW YORK.

[Seal of the American Surety Company.]

By W. J. LYONS,

Resident Vice-President.

Attest.

M. RITCHEY,  
Resident Asst.-Secretary.  
(As Surety.) [320]

ORDER ON BOND.

This bond being presented to me, the undersigned District Judge presiding at said trial, for approval of the sufficiency of the surety, and it being considered that The American Surety Company of New York is a surety company authorized in this District to and does give bonds in such causes, the said bond is hereby approved in accordance with the amount heretofore affixed by this Court this 10th day of October, 1928.

JOHN H. McNARY.  
JOHN H. McNARY,  
District Judge.

Filed October 10, 1928. [321]

---

AND AFTERWARDS, to wit, on the 26th day of March, 1929, there was duly filed in said court, a praecipe for transcript, in words and figures as follows, to wit: [322]

[Title of Court and Cause—Causes Nos. E.-8936,  
E.-8939.]

PRAECIPE FOR TRANSCRIPT ON APPEAL.

To G. H. MARSH, Clerk of the Above-entitled  
Court, Postoffice Building, Portland, Oregon.

You will please make up the transcript on appeal

in the above causes including therein the following papers, copies of which in each instance I furnish you numbered 1 onward consecutively as per the items below.

- (1) Burckhardt complaint #E.-8936, copy of which is herewith furnished you.
- (2) Motion of Chauncey McCormick with affidavit attached (the cover part need not be included. [323])
- (3) Order signed by Judge Bean, December 27, 1927, on the McCormick motion, copy of which, excluding cover, furnished herewith.
- (4) Answer of defendant Phil Metschan.
- (5) Answer of defendant Charles K. Spaulding.
- (6) Answer of defendants,—Bank, Charlton, Collins, McCormick, McDougall, Pittock, Skinner, Stewart, Price and Twohy.
- (7) Answer of Emery Olmstead.
- (8) Answer of Charles A. Morden.
- (9) Complaint in cause #8939 as filed by Ballin.
- (10) Decree of July 11, 1928, signed by Judge Bean.
- (11) Petition for appeal and the allowance of the same.
- (12) Bond on appeal.
- (13) Citation.
- (14) Statement of the evidence, to be settled, approved and allowed in accordance with Rule 75, the original of which statement is now herewith lodged with you and a copy of

which has been served upon counsel for the defendant respondents.

- (15) Along with this I am appending a notice of the filing and to note a hearing ten days hence for the allowance of statement, service of which has been duly made.
- (16) A copy of this praecipe as served upon counsel and as attached to said statement.

Very respectfully yours,

W. C. BRISTOL,

Attorney for Complainants in the Lower Court and for the Appellants.

Filed March 26, 1929. [324]

---

AND AFTERWARDS, to wit, on the 5th day of June, 1929, there was duly filed in said court, a counter-praecipe for transcript of record on appeal, in words and figures as follows, to wit: [325]

[Title of Court and Cause—Causes Nos. E.-8936, E.-8939.]

COUNTER PRAECIPE FOR TRANSCRIPT  
ON APPEAL.

To G. H. MARSH, Clerk of the Above-entitled Court, Postoffice Building, Portland, Oregon.

You have heretofore been requested by Mr. W. C. Bristol, attorney for the complainants in the above-entitled case, to make up the transcript on appeal in the above causes and to include therein certain

papers. We hereby request and direct you that in making up said transcript on appeal you include therein the following papers not included in the list furnished you by Mr. W. C. Bristol, attorney for [326] the complainants:

1. Answer of defendant Phil Metschan in the Ballin case.
2. Answer of defendant Charles K. Spaulding in the Ballin case.
3. Answer of defendants, Northwestern National Bank, Charlton, Collins, McCormick, McDougall, Pittock, Skinner, Stewart, Price and Twohy in the Ballin case.
4. Answer of defendant Emery Olmstead in the Ballin case.
5. Answer of defendant Morden in the Ballin case.
6. Decree in Burkhardt case.
7. Memorandum decision of Judge Bean on motion to quash service on defendant McCormick.
8. Petition for appeal in Ballin case.
9. Bond on appeal in Ballin case.

Very respectfully yours,

CHARLES A. HART,  
CAREY & KERR,

Attorneys for Defendants, Northwestern National Bank, Charlton, Collins, McCormick, McDougall, Pittock, Skinner, Stewart, Price and Twohy.

ALFRED A. HAMPSON,  
DEY, HAMPSON & NELSON,  
Attorneys for Defendant Phil Metschan.

ROBERT F. MAGUIRE,  
WINTER & MAGUIRE,

Attorneys for Defendant Charles K. Spaulding.

JOHN F. LOGAN,

Attorney for Defendant Charles A. Morden.

[327]

District of Oregon,  
County of Multnomah,—ss.

Due service of the within praecipe for transcript on appeal is hereby accepted in Multnomah County, Oregon, this fourth day of June, 1929, by receiving a copy thereof, duly certified to as such by C. A. Hart, of attorneys for respondents over objection not filed within time.

W. C. BRISTOL,  
Attorney for Complainant.

Complainants refuse an unqualified acceptance hereof for the portions now requested are not within province or time of the rule.

W. C. BRISTOL,  
Attorney for Complainant.

June 4/29.

Filed June 5, 1929. [328]

---

AND AFTERWARDS, to wit, on Monday, the 17th day of June, 1929, the same being the 81st judicial day of the regular March term of said court—Present: the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [614]

[Title of Court and Cause—Causes Nos. E.-8936,  
E.-8939.]

ORDER DIRECTING TRANSMISSION OF  
EXHIBITS.

It appearing to the Court that G. H. Marsh, Clerk hereof, has about completed the transcript upon appeal in these causes and *and* that it would be proper, as heretofore considered by the Court, for the United States Circuit Court of Appeals to have before it for consideration and inspection the original exhibits in these causes, it is now therefore

CONSIDERED, ORDERED AND ADJUDGED that G. H. Marsh, Clerk, be directed in connection with this order to transmit as part of said transcript now prepared to Paul P. O'Brien, Clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit, at San Francisco, the original exhibits in these causes as introduced upon trial for the consideration and inspection of said Court upon the appeal pending therein.

Dated this 17 day of June, 1929.

R. S. BEAN,  
District Judge.

Filed June 17, 1929. [615]



CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages, numbered from 3 to 615 inclusive, constitute the transcript of record upon the appeal in a cause in said court, in which Charles A. Burekhardt is plaintiff and appellant, and The Northwestern National Bank, Charles K. Spaulding, Phil Metschan, A. D. Charlton, E. S. Collins, Chauncey McCormick, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price, Emery Olmstead, James F. Twohy and Charles A. Morden, are defendants and appellees, and another cause in said court in which Fred A. Ballin is plaintiff and appellant, and The Northwestern National Bank, Charles K. Spaulding, Phil Metschan, A. D. Charlton, E. S. Collins, Chauncey McCormick, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price, Emery Olmstead, James F. Twohy and Charles A. Morden, are defendants and appellees; that the said transcript has been prepared by me in accordance with the praecipis for transcript filed by said appellant and said appellees and is a full, true and complete transcript of the record and proceedings had in said court in said cause, as the same ap-

pear of record and on file at my office and in my custody, in accordance with the said praecipis.

I further certify that the cost of the foregoing transcript required by the praecipe of said appellant is \$126.30, and that the same has been paid by the said appellant, and that the cost of the transcript required by the praecipe of the appellees is \$18., and that the same has been paid by the said appellees.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court, at Portland, in said district, this June 28, 1929.

[Seal]

G. H. MARSH,  
Clerk. [616]

---

[Title of Court—Causes Nos. E.-8936, E.-8939.]

CITATION ON APPEAL (CHARLES A.  
BURCKHARDT).

To the Northwestern National Bank, Charles K. Spaulding, Phil Metschan, A. D. Charlton, E. S. Collins, Chauncey McCormick, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price, Emery Olmstead, Jas. F. Twohy and Charles A. Morden, and Their Respective Attorneys & Solicitors.  
GREETING:

WHEREAS, Charles A. Burckhardt in cause E.-8936 and Fred A. Ballin in cause E.-8939 both relating to the same subject matter and tried as one

cause lately in said court now have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law;

YOU ARE THEREFORE HEREBY CITED AND ADMONISHED to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

GIVEN under my hand, at Portland, in said District, this tenth day of October, in the year of our Lord, one thousand nine hundred and twenty-eight.

JOHN H. McNARY,

District Judge.

[Seal] Attest:

G. H. MARSH,

Clerk.

United States of America,  
District and State of Oregon,—ss.

Service of the within citation on appeal is hereby acknowledged by receiving copy thereof this 10th day of October, 1928, at Portland, Oregon.

CAREY & KERR,  
CHARLES A. HART,  
CHARLES E. McCULLOCH,  
Attorneys for the Bank and all Other Defendants  
Save Those Otherwise Represented.

WINTER & MAGUIRE,  
Attorneys for Charles K. Spaulding.  
DEY, HAMPSON & NELSON,  
Attorneys for Phil Metschan.

CAREY & KERR,  
CHARLES A. HART,  
CHARLES E. McCULLOCH,  
M. A. ZOLLINGER,  
Attorneys for E. S. Collins.

JOHN F. LOGAN,  
Attorney for Charles A. Morden.

[Endorsed]: Filed Oct. 10, 1928. [1]

[Title of Court—Causes Nos. E.-8936, E.-8939.]

CITATION ON APPEAL (FRED A. BALLIN).

To the Northwestern National Bank, Charles K. Spaulding, Phil Metschan, A. D. Charlton, E. S. Collins, Chauncey McCormick, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price, Emery Olmstead, James F. Twohy and Charles A. Morden, and Their Respective Attorneys & Solicitors,  
GREETING:

WHEREAS, Charles A. Burckhardt in cause E.-8936 and Fred A. Ballin, in cause E.-8939 both relating to the same subject matter and tried as one cause lately in said court now have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and have given the security required by law;

YOU ARE THEREFORE HEREBY CITED AND ADMONISHED to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

GIVEN under my hand, at Portland, in said District, this tenth day of October, in the year of our Lord one thousand nine hundred and twenty-eight.

JOHN H. McNARY,

District Judge.

[Seal] Attest:

G. H. MARSH,

Clerk.

United States of America,  
District and State of Oregon,—ss.

Service of the within citation on appeal is hereby acknowledged by receiving copy thereof this 10th day of October, 1928, at Portland, Oregon.

CAREY & KERR,

CHARLES A. HART,

CHARLES E. McCULLOCH,

Attorneys for the Bank and all Other Defendants  
Save Those Otherwise Represented.

WINTER & MAGUIRE,

Attorneys for Charles K. Spaulding.

DEY, HAMPSON & NELSON,

Attorneys for Phil Metschan.

CAREY & KERR,

CHARLES A. HART,

CHARLES E. McCULLOCH,

M. A. ZOLLINGER,

Attorneys for E. S. Collins.

JOHN F. LOGAN,

Attorneys for Charles A. Morden.

[Endorsed]: Filed Oct. 10, 1928. [2]

[Endorsed]: No. 5874. United States Circuit Court of Appeals for the Ninth Circuit. Charles A. Burckhardt, Appellant vs. The Northwestern National Bank, a National Banking Association, Charles K. Spaulding, Phil Metschan, A. D. Charlton, E. S. Collins, Chauncey McCormick, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price, Emery Olmstead, James F. Twohy and Charles A. Morden, Appellees, and Fred A. Ballin, Appellant, vs. The Northwestern National Bank, a National Banking Association, Charles K. Spaulding, Phil Metschan, A. D. Charlton, E. S. Collins, Chauncey McCormick, Natt McDougall, Frederick F. Pittock, Mark Skinner, Charles H. Stewart, O. L. Price, Emery Olmstead, James F. Twohy and Charles A. Morden, Appellees. Transcript of Record. Upon Appeals from the United States District Court for the District of Oregon.

Filed July 2, 1929.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

